



INTERNATIONAL CHROMIUM
DEVELOPMENT ASSOCIATION

ANTITRUST POLICY

2021 REVIEW

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1. ANTITRUST POLICY STATEMENT

1.0

The International Chromium Development Association («ICDA») is an international non-profit association that promotes the value and sustainability of the chromium industry. Its purpose is to represent, promote and defend the chromium industry worldwide by means of providing health safety and environmental («HSE») studies, specific research and development projects, educational tools related to the benefits and uses of chromium and independent market research. Subject to the provisions of this «Antitrust Policy», the ICDA does not provide any information to its Members¹ which may be construed as «Competitively Sensitive Non-Public Information»².

1.2

With a membership base spanning over 26 countries and across 6 continents, the ICDA is the authoritative voice representing the international chromium industry. The Members comprise the vast majority of the world's producers of chromite ore; and many users of chromite ore including producers of ferrochrome, stainless steel, chromium metals, chemicals, refractory bricks and foundry sands, trading companies, end-users and service providers.

1.3

Through the publication of statistical reports and market analysis, international seminars and annual conferences, the ICDA brings together stakeholder representatives of actual competitors or potential competitors in the chromium industry. Although the subject matter of the activities of the ICDA is purely informative in nature and there is no attempt to restrain³ competition in any manner whatsoever, the Council of the ICDA («Council») nevertheless recognises the possibility that the ICDA and its activities can be construed as an opportunity-forum to engage in anti-competitive conduct.

For this reason, the Council takes an opportunity to review its existing antitrust policy

1 The ICDA's members include ordinary members (producers of chrome containing materials), associate members (trading companies and trading associations) and affiliate members (end-users and service providers) (collectively referred to as «Members»).

2 Competitively Sensitive Non-Public Information refers to information which, if known, would reduce or remove uncertainty regarding the operations of a competitor or a potential competitor in a market and shall include, but not be limited to, any such information relating to –

- pricing/pricing strategies, including but not limited to, pricing of specific products and/or services, trading terms such as prices, discounts, rebates and credit terms offered to specific customers or customers in general and planned reductions or increases;
- margin and cost information by product or customer;
- operating expenses;
- information on specific customers, customer classification, and customer strategy (whether specific or general), including information with respect to the sales volumes to customers;
- marketing, advertising and promotional strategies;
- budgets and business plans; and
- agreements and other (non-standard) terms and conditions relating to the business of an entity

3 This includes the publication of the «Weekly Market Update» (which covers a market overview of chrome ore, ferrochrome, stainless steel, nickel and a manufacturing overview which covers production and consumption figures, trade data and inventory changes); «Quarterly Statistical Report» and «Quarterly Infographics Report» (which covers production and trade); «Quarterly Market Analysis»; an «Annual Statistical Bulletin» (which covers annual market analysis); and a «Specific Market Report» on a specific sector on ferrochrome, chrome ore, UG2, energy etc. In addition to these market intelligence reports, Members have access to ICDA promotional material related to chromium benefits (including videos and brochures), ICDA activity reports, HSE publication and scientific studies and presentations that are made at ICDA conferences by invited speakers. Subject to the provisions of the Antitrust Policy, the ICDA does not provide any information to its Members which may be construed as Competitively Sensitive Non-Public Information.

and through this document, it intends to indicate its unequivocal support to comply strictly in all respects with antitrust laws. Antitrust laws are intended to promote and protect competition from unfair restrictive business practices. Effective competition leads to lower prices, higher quality and increased output of goods and services which benefits consumers.

1.4

The ICDA is fully committed to promote free, fair and open competition.

To give effect to this imperative, this Antitrust Policy serves as a set of guidelines to assist and ensure that the conduct of the ICDA, its employees and its Members conform with the applicable antitrust laws and principles in every country in which it operates.

1.5

Infringements of antitrust laws can lead to serious consequences for the ICDA, its employees and its Members. This could include: (i) very significant fines; (ii) severe reputational and civil damages; (iii) a court order dissolving the association or seriously curtailing its activities and for the individuals involved termination of employment; and (iv) in some instances even personal, criminal sanctions including imprisonment. These penalties are so severe that good business judgment demands that every effort be made to avoid any infringement.

APPLICABILITY

2.1

The Antitrust Policy must be adhered to by the ICDA, its employees (which includes permanent and temporary employees, members of the Council and standing Committees) and all its Members participating in the activities of the ICDA. Moreover, prominent speakers that attend the international seminars and annual conferences of the ICDA must be provided with a copy of the Antitrust Policy.

2.2

All employees of the ICDA will receive a copy of the Antitrust Policy and undertake to sign and acknowledge that he/she has read and understood the policy in accordance with Annexure «A». It is the responsibility of every Member and their representative(s) that joins the ICDA to strictly adhere to the Antitrust Policy. A copy of the Antitrust Policy will also be available to all Members of the ICDA and can be found on the ICDA's website.

2.3

The Antitrust Policy is intended to guide the ICDA, its employees and its Members in a practical manner to ensure that all antitrust law transgressions are avoided or detected as early as possible in order for correct action to be taken (as the case may be). In this regard, if the ICDA, its employees and its Members suspect that an infringement of any antitrust laws or principles have occurred or if there is any doubt about whether a proposed course of action is permitted or not, then it must contact both the President of the ICDA and the Legal Administrator (Secretary General) of the ICDA promptly for corrective action⁴ to be taken.

⁴ Once the matter has been reported to both the President of the ICDA and the Legal Administrator (Secretary-General) of the ICDA, the next steps would be to liaise with the ICDA's antitrust legal advisors promptly to discuss the nature of the incident so that appropriate action can be taken.

GENERAL ANTITRUST PRINCIPLES - TRADE ASSOCIATIONS

3.1 OVERVIEW

3.1.1

In general, trade associations play a valuable role as a forum for discussion on important issues of common interest for the industry players who they represent. By its very nature, any act or any action that involves a trade association can result in a restriction of competition in the following ways:

3.1.1.1

The act of incorporation and the by-laws of an association are considered to be an «agreement» between the members of the association. As «agreements», they are fully subject to the antitrust laws and principles on horizontal restraints and restrictions and may expose the association's members to antitrust liability; and

3.1.1.2

Any decision, recommendation or other activity of the association may be capable of restricting competition between the members of the association. Decisions or recommendations do not need to be formal or binding, nor do they have to be fully complied with to fall within the scope of antitrust rules, provided that they have an appreciable effect on competition. Decisions or recommendations do not have to be expressly approved by the members of the association to give rise to antitrust liability and even verbal decisions may trigger antitrust liability if it is intended that members abide by it.

3.1.2

Despite their many pro-competitive aspects, trade associations by their very nature remain exposed to antitrust risks. This is because participation in the trade association's activities provide ample opportunities for firms in the same line of business and/or value chain to meet regularly to discuss business matters of common interest. Such meetings and discussions, even if meant to pursue legitimate association objectives, bring together direct or potential competitors and provide them with regular opportunities for an exchange of views on the market, which could easily spill over into illegal coordination, such as fixing of prices or trading conditions, market allocation, collusive tendering, bid-rigging practices and information exchange.

3.1.3

While the activities of trade associations are usually under scrutiny for potential infringements of antitrust rules on horizontal anti-competitive agreements, the activities of trade associations are also the subject of all antitrust rules, including provisions on vertical restraints and on abuse of dominance.

3.1.4

However, the traditional areas of concern for competition authorities when it comes to trade associations are price fixing (or fixing other trading conditions), allocation of customers and territories, and bid-rigging practices through the exchange of Competitively Sensitive Non-Public Information, the description of which are provided below.

3.2 DIRECT OR INDIRECT FIXING OF PRICING OR OTHER TRADING CONDITIONS

3.2.1

If the trade association directly or indirectly fixes the prices of the goods or services that are marketed in competition by its members, such conduct is likely to significantly restrict competition in the market.

3.2.2

Most competition authorities consider that such price-fixing arrangements, by their very nature, restrict competition appreciably and should be prohibited per se under the antitrust rules.

3.2.3

There are many ways in which a trade association can fix prices. Price fixing may involve fixing the actual price charged by the trade association's members as well as one of its components, such as the level of discounts or allowances, transport fees, delivery charges or the level of payments for additional services, credit terms or the terms of guarantees.

3.2.4

In addition to prices, the members also compete on other terms and conditions of sale. For instance, trade associations may also be involved in the formulation of the standard terms and conditions to be applied by the members in their trading relationships. While not all terms and conditions are likely to have an appreciable effect on competition, if a trade association imposes on its members an obligation to use common terms and conditions of sale or purchase, this will inevitably restrict competition to some degree.

3.3 ALLOCATION OF MARKET SHARE, CUSTOMERS, SUPPLIERS, TERRITORIES OR SPECIFIC TYPES OF GOODS OR SERVICES

3.3.1 Market allocation may take different forms: firms can allocate to each other market shares, individual customers or entire customer groups, individual suppliers or entire supplier groups, specific types of goods or services, or they can assign to each other exclusive trading territories.

3.4 COLLUSIVE TENDERING AND BID-RIGGING PRACTICES

3.4.1

Tenders and other procurement processes for the award of contracts are designed to achieve a competitive outcome in a situation where competition might otherwise be absent. An essential feature of a tendering system is that prospective suppliers prepare and submit their bids independently. If bidders agree amongst themselves on who should win the tender and/or at what price, this will almost invariably infringe competition rules.

3.4.2

Collusive tendering can take many forms. Trade associations may function as a conduit for the bid-rigging practice and collect the information on intended quotes and allocate tenders amongst their members according to an agreed methodology.

3.5 COLLECTION AND DISSEMINATION OF MARKET INFORMATION

3.5.1

One of the most important tasks of trade associations is to provide their members with information on the development of their industry and particularly with statistical information on economic and business factors relevant for the members' trading activities.

3.5.2

The availability of information on the market and its development is generally viewed as critical to advancing a competitive environment. The knowledge of the market and its key features facilitates the development of efficient and effective commercial strategies by the market players. New entrants may benefit from this information to enter the market more effectively and to compete more fiercely against incumbents.

3.5.3

It is important to establish a clear demarcation between cases where the dissemination underlies an illicit conspiracy and cases where it facilitates healthy and vigorous competition.

3.6 EXCHANGE OF COMPETITIVELY SENSITIVE NON PUBLIC INFORMATION

3.6.1

It is generally accepted by competition authorities globally that one of the legitimate and key objectives of industry associations is to engage on policy matters in so far as they affect that industry, resulting in members legitimately exchanging Competitively Sensitive Non-Public Information on a variety of matters, such as safety and health. The harmful effects of information exchange depend on the nature and characteristics of the information.

Thus, the exchange of Competitively Sensitive Non-Public Information should be limited to what is relevant and necessary to achieve the ICDA goals and should not include incremental or additional information.

3.6.2

Information exchanges can also arise through vertical interaction between customers and suppliers, as well as other third parties such as independent consultants, university research centres and other entities not considered to be competitors. In this regard, the exchange of commercially sensitive information can occur through both direct and indirect means:

3.6.2.1

Direct:

For example, telephone calls, face-to-face meetings and written communication.

3.6.2.2

Indirect:

For example, public price announcements on future pricing plans, and price signalling.

3.6.3

The market structure, availability and indispensability of information are general factors that inform the competition effects of information sharing.

GREEN FLAGS

4.1

The following green flags (structural measures and procedures) can help mitigate the risk of information sharing occurring as a part of the day-to-day operations of the ICDA:

4.1.1

The type and nature of the information exchanged: competitively sensitive information such as prices, volumes and commercial strategies cannot be shared with any third parties and Members that are actual or potential competitors.

4.1.2

The level of detail of the information exchanged: the higher the amount of detail, the higher the possibility for Members that are actual or potential competitors to predict the future conduct of one another and to make the necessary adjustments. Information exchanged should be aggregated as far as possible and be disseminated among all industry players simultaneously. For example, information shared could be aggregated quarterly in arrears and contain information of not less than five competitors.

4.1.3

The reference period of the information exchanged: the exchange of data regarding future strategies is more troublesome than the exchange of historical data. Information on future conduct is particularly sensitive and should remain within the corporate knowledge of each Member. Historical information has generally lost its competitive value and cannot affect the future conduct of the Members involved.

4.1.4

The frequency of the exchange: the exchange of data should be infrequent in order to mitigate competition risk. Frequent data exchanges allow Members to better adapt their commercial policy to their competitors' strategy and therefore are more likely to lead to anti-competitive effects.

4.1.5

The nature of the products in question: it is easier for Members to coordinate on a single, homogeneous product than on many differentiated products.

4.1.6

All ICDA employees should be independent and should not be concurrently employed by a Member.

4.1.7

All ICDA employees should have separate files and document storage facilities which should be strictly maintained. These files must be held in strict confidence and must not be shared with any unauthorised person or the Members.

4.1.8

The ICDA should develop, monitor and ensure adherence to a formal document disposal programme, for example, by appointment of an independent third party for monitoring, such as, an internationally recognised auditing firm.

4.2

The following guidelines should be followed in relation to ICDA seminars and annual conferences:

4.2.1

All meetings should be scheduled and impromptu meetings without clear agendas should be avoided;

4.2.2

Agendas of all meetings must be compiled for prior review; and

4.2.3

The Chairman can commence the seminar or annual conference with language indicating antitrust compliance, for example:

1. The purpose of this meeting is X
2. This meeting will be minuted.
3. All parties participating in this meeting shall at all times comply with the Antitrust Policy and be mindful of their responsibilities under the Antitrust Policy.
4. Specifically, all parties acknowledge and agree that they must not discuss or disclose formally or informally at the meeting any Competitively Sensitive Non-Public Information in violation of the Antitrust Policy.
5. It is the responsibility of each attendee at this seminar/conference to ensure that at all times they understand and comply fully with their legal responsibilities.
6. If any attendee believes that Competitively Sensitive Non-Public Information is being discussed in violation of the antitrust rules, he/she should verbally object to the discussion and recuse him/herself from the meeting. His/her objection and departure will be noted in the minutes.

NON-COMPLIANCE

5.1

It is acknowledged that non-compliance with the Antitrust Policy may expose the ICDA, its employees and its Members to inter alia substantial financial penalties and will result in reputational damage. This will harm the market globally and will result in anti-competitive effects throughout the value chain.

5.2

Non-compliance with the provisions of the Antitrust Policy by a Member may, subject to an investigation, result in the revocation of that Member's membership with ICDA.

5.3

The ICDA accepts no liability for any non-compliance of its Members with antitrust laws and principles. Accordingly, any penalty imposed on a Member in terms of antitrust laws will be borne by the particular Member to which the penalty is imposed and not by the ICDA.

6 REVIEWING OF THE ANTITRUST POLICY

The Antitrust Policy will be reviewed and amended every three years, or more frequently if required. This will ensure that the Antitrust Policy adequately informs the ICDA, its employees and its Members of any changes in antitrust laws and principles from time to time. In the event that there is any doubt on a specific question or matter affecting antitrust laws or principles, the ICDA can contact its antitrust law legal advisors at all times within the three year period prior to the review. .

ANNEXE A

DECLARATION

- 1 I hereby acknowledge that I have read and understood the Antitrust Policy.
- 2 I declare that it will be binding and enforceable should I contravene the Antitrust Policy.

SIGNED AT ON 2021

SIGNATURE

NAME

DESIGNATION



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