



INTERNATIONAL CHROMIUM
DEVELOPMENT ASSOCIATION

ANTITRUST POLICY

2024 REVIEW

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1. ANTITRUST POLICY STATEMENT

1.0

The International Chromium Development Association («ICDA») is an international non-profit association, headquartered in France, 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, organising events, and conducting independent market research.

1.2

The International Chromium Development Association (ICDA), with a global membership of over 100 companies, is regarded as the authoritative voice representing the international chromium industry.

The Members¹ comprise the vast majority of the world's producers of chrome ore; and many users of chrome ore including but not limited to 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, the hosting of international seminars and annual conferences, ICDA brings together stakeholder representatives of actual and/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 restrain² competition in any manner whatsoever, the Council of the ICDA ("Council") nevertheless recognises the possibility that ICDA and its activities could be at risk of being construed as a forum through which to engage in anti-competitive conduct, such as the sharing of «Competitively Sensitive Non-Public Information»³.

For this reason, the Council, the ICDA members, employees and any individual engaged with the ICDA are committed to ensuring compliance with this Antitrust Policy.

1 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 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.

3 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;
- details of any planned new offerings,
- budgets and business plans; and
- agreements and other (non-standard) terms and conditions relating to the business of an entity.

And through this document, it intends to indicate its unequivocal intention 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

ICDA is fully committed to promoting free, fair and open competition. In order to give effect to this commitment, this Antitrust Policy serves as a set of guidelines to assist and ensure that the conduct of ICDA, its employees and its Members, as well as any other individual or organisation engaged with the ICDA conforms 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 ICDA, its employees and its Members. This could include: (i) very significant fines; (ii) severe reputational harm; (iii) a court order dissolving the association or seriously curtailing its activities and for the individuals involved termination of employment; (iv) a risk of claims for damages from third parties; and (v) in some instances even personal, criminal sanctions including imprisonment. These penalties are so severe that good business judgement demands that every effort be made to avoid any infringement.

APPLICABILITY

2.1

This Antitrust Policy must be adhered to by ICDA, its employees (which includes permanent and temporary employees, members of the Council and standing Committees) and all its Members as well as any individual or organisations participating in ICDA activities. Moreover, speakers that attend ICDA's seminars and conferences must be provided with a copy of the Antitrust Policy.

2.2

All employees and Members of 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 ICDA to strictly adhere to the Antitrust Policy. A copy of the Antitrust Policy will also be available to all Members of ICDA and can be found on 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 for ICDA 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

Trade associations play a valuable role as a forum for discussion on important issues of common interest for the industry players whom they represent. However, despite their many pro-competitive aspects, trade associations by their very nature have the potential to create significant antitrust risk. The following examples demonstrate how this could occur:

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 subject to the antitrust laws and principles on anti-competitive agreements and conduct. Compliance is therefore critical for a trade association and its Members.

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 are capable of having 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.

3.1.2

Participation in the trade association's activities provide ample opportunities for participants 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

The traditional areas of concern for competition authorities when it comes to trade associations include price fixing (or fixing other trading conditions), allocation of customers and territories, bid-rigging practices through the exchange of Competitively Sensitive Non-Public Information. Descriptions of each of these examples are provided below. It should be borne in mind that these are examples only and are not the only ways in which an infringement of antitrust laws could arise.

3.2 DIRECT OR INDIRECT FIXING OF PRICING OR OTHER TRADING CONDITIONS

3.2.1

If the ICDA (or its Members through ICDA activities) directly or indirectly agree the prices of the goods or services that are marketed in competition by its Members, such conduct would almost invariably breach antitrust laws.

3.2.2

Most competition authorities consider that such price-fixing arrangements, by their very nature, are capable of restricting 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 (including relationships with customers and suppliers). 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 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 bid-rigging practices, for example by collecting the information on intended quotes and allocating tenders amongst 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 INFORMATION AND INFORMATION GATHERING

3.6.1

Members should *never* discuss, exchange or reach any agreement on Competitively Sensitive Non-Public Information. This prohibition applies to both formal ICDA meetings and any informal contacts between Members at the fringes of meetings/events.

It is generally accepted by competition authorities globally that one of the legitimate and key objectives of trade associations is to engage on and discuss policy matters in so far as they affect that industry. In order to do so, ICDA may from time to time wish to collect and publish industry statistics, undertake market research/industry studies, and engage with authorities on matters of concern to the industry, among other things. This may require ICDA to gather certain information from Members.

When gathering information for these purposes, ICDA will comply with the following rules to ensure that Competitively Sensitive Non-Public Information is not shared – directly or indirectly – between Members:

- The collection, handling and dissemination of Member information shall be carried out exclusively by ICDA employees who are independent of all Members.
- If ICDA intends to engage third party experts to assist with e.g. the analysis or presentation of the information, such third parties must be independent of all ICDA members.
- Disseminated information must be sufficiently aggregated (such that data relating to individual members cannot be identified) and historical.
- The information must include the data of a sufficient number of Members to enable meaningful aggregation and where possible, no single Member should represent >25% of a given statistic. Where this is not possible, and certainly where the data relates to only one Member, the data should be given as a range not a specific figure, or the dataset widened to include other Members.

For the avoidance of doubt, participation by Members in any such information gathering exercise shall be voluntary. may be legitimate exchange of certain information.

RISK MITIGATION

4.1

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

4.1.1

The type and nature of the information exchanged: Competitively Sensitive Non-Public Information (such as prices, volumes and commercial strategies) should never be shared between Members.

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 by ICDA with Members should be aggregated as far as possible and be disseminated by ICDA 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 (such as information over 5 years old) 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 collusively coordinate on a single, homogeneous product than on many differentiated products.

4.1.6

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

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. Where appropriate the ICDA antitrust legal advisor will be consulted;

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 ICDA, its employees and its Members to, inter alia, substantial financial penalties, reputational damage and a potential for third party actions for damages. Any such non-compliance is likely to harm the sector globally and may 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 ICDA membership.

5.3

ICDA accepts no liability for any non-compliance of its Members with antitrust laws and principles. Accordingly, any penalty imposed on a Member as a result of an antitrust law infringement must always be borne by the particular Member to which the penalty is imposed and not by 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, ICDA can consult with its current antitrust law legal advisor.

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**

SIGNATURE

NAME

DESIGNATION



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