

APPENDIX I: Code of Conduct - Guidelines for Compliance with Antitrust Laws

1. Introduction

- 1.1. The International Iron Metallurgy Association (IIMA) is an international trade association representing the global ore-based metallurgy industry. The Members of IIMA represent many of the world's producers, traders and distributors of ore-based metallurgy as well as other companies associated with the industry, such as suppliers of raw materials, freight and logistics services, technology, equipment, etc. It is IIMA's policy to comply with the competition and antitrust laws of all of the regions and jurisdictions in which it or its members operate. Whilst the laws of different countries may differ in some respects, the purpose of this Policy is to outline the most important principles governing the conduct of competitors in trade associations, which reflect the competition and antitrust laws of the strictest jurisdictions and form the basis for best practice guidelines. This Policy is therefore necessarily general in nature and cannot anticipate every legal issue or fact pattern that might be faced by IIMA, its members, or its staff. Accordingly, it is important that individuals consult the Secretary General who shall in appropriate cases seek legal advice when questions arise as to this Policy's application.
- 1.2. Through the adoption and issuance of this Policy, IIMA reconfirms its intent to abide by the spirit and the letter of competition laws. This Policy sets out guidelines that all IIMA officers, directors, employees, contractors and members must follow. It applies both to activities within IIMA and any joint activities that involve IIMA with other entities, trade associations and the like. Moreover, IIMA's officers, directors, employees, contractors and members will ensure that persons working for them also comply with this policy statement as actions taken by individuals purporting to speak or act on behalf of IIMA can result in liability not only for member companies but for IIMA itself.

2. Key antitrust and competition law principles applicable to trade associations

Introduction

- 2.1. Many legitimate and pro-competitive arrangements between competitors may be undertaken under the auspices of a trade association.
- 2.2. Indeed, many functions of trade associations may fall outside the scope of antitrust and competition laws altogether, since they do not restrict the commercial freedom of members of the trade association or foreclose the opportunities of non-members in relation to any relevant markets. Functions in this category may include, for example, representing the relevant industry's view to governmental and regulatory institutions, making arrangements for smaller members to obtain legal information and advice, handling the public relations face of the industry, promoting standard education and training, adopting industry standards, and undertaking industry-wide research.
- 2.3. However, because a trade association is, by definition, a joint activity engaged in by players within the same industry (including actual and potential competitors), some activities of a trade association and its members, depending upon their substance and the market structure, can give rise to concerns under UK and/or EU competition law. The activities of trade associations are thus closely scrutinised by the antitrust and competition authorities.

Anticompetitive agreements

- 2.4. Most antitrust and competition laws prohibit agreements between competitors to restrict competition, and in particular those which:
 - a) directly or indirectly fix purchase or selling prices or any other trading conditions;
 - b) limit or control supply, production, technical development, or investment; and/or
 - c) share markets or customers.
- 2.5. 'Agreements' are defined very broadly in the laws and can refer to horizontal, vertical, written, oral, formal or informal contracts. Improper agreements can also arise from a single or multiple contacts. An unspoken understanding (a 'nod and a wink') or a 'gentleman's agreement' may also fall within the remit of the competition laws.
- 2.6. Additionally, the laws of some jurisdictions prohibit anti-competitive 'decisions' of associations, which may include the rules and resolutions of a trade association and even mere non-binding recommendations. In essence, anything that accurately reflects the association's desire to coordinate its members' conduct may be included in the concept of a decision.
- 2.7. Speeches or announcements made by members at trade association events have also formed the basis for antitrust and competition lawsuits and investigations where these have been regarded as 'public signalling' to the market to engage in anti-competitive activities (e.g. to restrict supplies or make common pricing changes).
- 2.8. Finally, in some jurisdictions (including in the European Union (EU)), the exchange of competitively sensitive information can amount to a competition violation in and of itself, even in the absence of an agreement.

Abuse of collective market strength

- 2.9. Many antitrust and competition laws prohibit abuse by one or more businesses of a strong market position. This can exist on the part of one undertaking or two or more undertakings (collective market power or dominance); as such, it can arise in the context of a trade association where members together account for a significant proportion of the market.
- 2.10. The type of conduct that can give rise to concerns in the context of a trade association may consist of either restricting a competitor's access to the market (e.g. restricting a market player's participation without objective justification, or collectively refusing to deal with a competitor, supplier or customer - which may also amount to an unlawful boycott agreement), or exploiting collective market strength to gain market share or undue advantages (e.g. imposing onerous or unjustified standard terms which put trading partners such as customers at a competitive disadvantage, or discriminating between similar customers or suppliers).

Why is compliance important?

- 2.11. Firstly, antitrust and competition authorities have powers to conduct lengthy, disruptive and expensive investigations and impose significant fines on both members and the association. For example, in the EU financial penalties can be as high as 10% of a group's total annual worldwide turnover. The courts have confirmed that, in determining the maximum fine that can be imposed on a trade association, the European authorities are entitled to take into account its members' turnovers, even if in a given situation an association might not have had the power to bind its members. Secondly, antitrust or competition law violations committed in the context of trade association activities (e.g. at industry events) have led to civil actions for damages against members in the hundreds of millions of dollars, as well as resulted in significant reputational harm and loss in share value for the participating companies.
- 2.12. Thirdly, competition law infringements can lead to serious consequences for individuals, for example resulting in major personal fines, prison sentences, director disqualification, extradition, and career-related consequences in many countries.

3. DOs and DON'Ts

- 3.1. IIMA is inherently pro-competitive but, like any trade association, it could be abused and turned into a vehicle for anti-competitive collusive or abusive conduct. Our members are high profile companies whose activities may have an effect on the market, hence their dealings with competitors – such as within IIMA – must be conducted according to the highest possible standards.
- 3.2. In particular, IIMA, its officers, staff, contractors, members and anyone acting on its behalf should be aware of the following key areas of competition risk and comply at all times with the following principles:
 - a) *Discussion or agreement on competitively sensitive topics*
- 3.3. There is a risk of presentations or discussions at IIMA meetings giving rise to, or being construed as facilitating, an agreement by competitors to fix prices, allocate markets or customers, or otherwise unlawfully restrict competition. In addition, the mere exchange of competitively sensitive information between competitors may amount to a serious restriction of competition in some jurisdictions.
- 3.4. Accordingly, members **should never discuss, exchange information, or reach any agreement on, any of the following topics (“competitively sensitive topics”)**:
 - a) Prices, including any elements of price (such as discounts or rebates) or the timing of pricing changes. Unlawful “price fixing” can include any agreement between competitors or potential competitors to fix, control, coordinate, maintain or otherwise affect the prices, or the elements of a pricing policy (for example the rates, costs, credit terms, margins, dates of change or other elements), of products or related services. Price fixing is unlawful regardless of whether the parties to the agreement are buyers or sellers, and whether the price is a maximum price or a minimum price. An agreement among competitors to raise, lower, or stabilise prices will be unlawful even if the price agreed upon is reasonable or beneficial to consumers and even if the agreement is never put into effect.

- b) Credit and other standard terms for customers
- c) Profits and profit margins
- d) Production costs
- e) Future strategic plans
- f) Future production / supply volumes
- g) Market shares
- h) Distribution Agreements
- i) Sales territories
- j) Selection or termination of customers
- k) Negotiation strategies
- l) Common responses to requests from customers
- m) Specific tenders or bids

3.5. In particular, IIMA and its members shall not engage in any discussion, agreement or efforts to fix prices, divide customers, allocate territories or markets, restrict supply or sales volumes, or in any way agree to control members' output of products or services.

(b) Information exchange, including industry surveys or joint responses to regulators, that may involve, or be perceived as facilitating coordination between competitors

3.6. Trade associations may collect and publish industry statistics giving an aggregate picture (without identifying individual companies), jointly compile market research and general industry studies, and communicate with and advocate to authorities on matters of concern to the industry as a whole.

3.7. However, in light of the legal risks associated with the exchange of competitively sensitive information between competitors (discussed above), the following precautions should be followed in the conduct of such activities:

- a) participation in any information or data collection should be voluntary;
- b) collection, handling and dissemination of member information should be managed by an independent third party;
- c) all submissions should be kept strictly confidential;

- d) there should be a sufficient number of survey respondents to enable concealment of respondents' identities, and no respondent should represent a significant amount (e.g. more than 25%) of a weighted basis for any given statistic;
- e) disseminated information should be sufficiently aggregated such that recipients are unable to identify the data source, historical and non-specific; and
- f) individual submissions should be discarded after their incorporation into the intended association report;

(c) Standard-setting, including best practices, where this may give rise to restrictions on competition

- 3.8. Industry self-regulation through standard-setting initiatives (e.g. the establishment of best practice guidelines or standard terms) can, among other things, help to establish a baseline for product or service quality in an industry, enhance technical compatibility among the products of different manufacturers, improve product safety and efficacy, and ensure that firms adhere to basic rules of business ethics. Because the adoption of uniform standards may restrain competition on the standardised features, however, the process can raise competition concerns. Standard-setting efforts can dampen key aspects of market competition by denying customers the choice of non-standardised products or services, can serve to exclude or discipline firms that pose a competitive threat, and can provide a forum for unlawful collusion.
- 3.9. In order to ensure that standard-setting activities remain well within the competition bounds, IIMA should clearly articulate the pro-competitive objectives to be achieved at the outset of the standard-setting process. It is important that all interested parties are given the opportunity to participate in the standard-setting process and that the standards are effectively accessible for anyone in the industry.

(d) Boycotts, refusals to deal and exclusions from membership in IIMA which are not justified by objective and legitimate reasons

- 3.10. Boycotts and concerted refusals to deal may be unlawful. Accordingly, members should not discuss or jointly agree not to do business with certain third parties, and IIMA shall not suggest the same to members, directly or indirectly. Similarly, IIMA and its members should not create "blacklists" of companies engaged in disfavoured practices, nor suggest or foster agreement as to specific methods of dealing with certain companies.
- 3.11. As regards refusing or terminating membership, legitimate criteria for admitting new members into trade associations are acceptable under competition laws. IIMA shall ensure that it applies objective and reasonable association rules and criteria for admission of new members, and does not exclude otherwise qualified third parties from membership.
- 3.12. IIMA is permitted to reject a potential member, to terminate a membership and/or to restrict a member's right to participate in meetings or association activities, provided that it has objective, reasonable and legitimate reasons for doing so and applies the rules and criteria fairly and neutrally (i.e. does not favour certain members over others).

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Annex 1

IIMA Meeting Guidelines

1. All meetings shall follow an agenda approved in advance by the IIMA secretariat or the chairman of the meeting, who shall obtain legal advice as appropriate.
2. IIMA shall endeavour to prepare minutes of all meetings or a record of discussions as appropriate. The chairman of the meeting shall review a draft of the meeting minutes or record before these are finalised.
3. The agenda should be closely followed. Meeting participants shall not discuss any competitively sensitive topics, including but not limited to current or future prices, elements of price (such as discounts, rebates or margins), production costs, customer terms, or production volumes.
4. Meeting participants shall not discuss any intention or willingness to go along with future prices or margins, limitations of supply, customer or market allocations, or any other agreement or concerted practice regarding competitive terms or conduct.
5. Meeting participants shall not discuss or suggest any form of coordinated reaction to dealings with any third party.
6. Meeting participants shall not pressurise anyone into adopting any agreed-to business practices.
7. IIMA shall ensure that the attendees at every meeting, seminar or conference organised or sponsored by IIMA where two or more competitors are present are reminded of the principles set out in the Competition Compliance Declaration attached at **Annex 2**.
8. IIMA shall endeavour to ensure (for example through the reminder given at the start of each meeting or event) that to the extent any informal sessions or discussions take place, they comply with these guidelines.

Annex 2

Competition Compliance Declaration

[IIMA shall ensure that the attendees at every meeting, seminar or conference organised or sponsored by IIMA where two or more competitors are present are reminded of the principles set out in IIMA's Antitrust and Competition Law Compliance Policy, and specifically those set out in the Declaration below. For the avoidance of doubt, this exact wording need not be used provided that the principles are clearly stated.]

This meeting will be held in compliance with the competition policy that has been adopted by IIMA. In particular, it is important to remember that IIMA's activities will not include any action, express or implied, formal or informal:

- a) To collectively fix, control, coordinate, maintain or otherwise affect prices, elements of pricing or other terms of competition of or concerning iron metallics products or related services. Accordingly, competitors at this [meeting / event] shall not share or discuss the current or future pricing information or intentions, or other commercially sensitive information (including costs, production, supply, business strategy, or customer terms), of any company;
- b) To boycott or refuse to deal with any third parties;
- c) To engage in any activities, such as standard setting activities, that have an anti-competitive objective or effect; or
- d) To engage in any efforts to divide customers, allocate territories or markets, restrict sales volumes or in any way agree to control members' output of products or services.

Annex 3

IIMA Dawn Raid Checklist

The present document is a checklist to address an unannounced inspection by competition authority officials.

1. Reception/administrative staff immediately informs personally the following list of people, by order of priority:

John Atherton Secretary General	M: +44 7766 072100
Jennifer Marsh External Counsel, K&L Gates	T: +44 20 7360 8223 M: +44 7947 978466
Raminta Dereskeviciute External Counsel, K&L Gates	T: +44 20 7360 8264 M: +44 7534 500363

No communication with outside world unless specifically requested by any of the persons above.

NB. Time will be of the essence, as the officials will not wait long to begin the investigation.

2. Ask all investigators to produce their identification documents (eg staff card with name and photograph) and formal authorisation or warrant to conduct the investigation. Take copies. If in doubt, call the European Commission (DG Competition) for confirmation of identity (+32 229 911 11), or Competition and Markets Authority (+44 (0) 20 3738 6000).
3. Reception/administrative staff politely invite officials to a waiting room or an empty meeting room until internal contact and external legal advisers arrive.

NB. Investigators do not have to wait for legal advisors to arrive. Do not refuse entry without first taking legal advice.

4. Inform all staff that an investigation is taking place and instruct them not to obstruct it. Staff should not take any papers away from the premises and/or move any electronic files. Ensure that full cooperation with the Officials is maintained.
5. Set up / unite a Dawn Raid Team consisting of a Team Leader and at least the same number of staff as there are Investigators. Each Investigator should be shadowed (accompanied) at all times by a member of the Dawn Raid Team.
6. Answers should be limited to logistical questions (eg passwords, location of filing cabinets, etc.), and kept short, factual and accurate. Staff should be advised to avoid answering any substantive questions without legal counsel present, and to not guess or speculate, or volunteer information or views.

Designate a senior executive to be the main person who should be answering ALL the Investigators' questions. Keep a written record of all questions asked and answers given.

7. Take two hard copies of all documents requested - one for the Investigators and one for IIMA. Take a copy of the electronic files that the investigators take with them. Do not allow the Investigators to image computers unless their Authorisation allows for this.

8. Shadowers should:
 - a. Check if documents are legally privileged BUT should not refuse access to a document without legal advice. In case of disagreement the document should be placed in a sealed envelope and should not be read by the investigators until the question of legal privilege is resolved.
 - b. Make and retain a list of all documents and all electronic files that the investigators review or take with them.
9. Make and retain a list of all copied documents and all electronic files that the investigators take with them.
10. On departure of officials, determine with them whether they have completed the inspection or whether they need to return. In the latter case, they will affix seals at the premises. Do not attempt to break seals and warn staff (eg cleaning and security staff) not to tamper with or break any seals.
11. In case of outstanding questions regarding legal privilege or scope of the investigation, agree with officials that these questions will be addressed at a later stage. Also seek confirmation that documents will be treated as confidential and that the association's full co-operation has been recorded.

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