Antitrust Compliance Policy

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Responsibility for This Policy

IRMA holds responsibility for this document and its contents.

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1.0	19 October 2023	First publication, approved by the IRMA Board of Directors

Introduction

In pursuit of its goal of improving environmental and social performance of mining operations, IRMA brings together a coalition of NGOs, purchasers of minerals and metals, affected communities, mining companies, organized labor, and the finance sector to work toward the common objective of promoting responsible mining. IRMA is committed to conducting all meetings and activities in strict compliance with all applicable federal and state antitrust laws. Because members of IRMA may be competitors or potential competitors and participants in a common industry, it is of particular importance to maintain awareness of the unique legal issues that may arise through competitor interaction and take all necessary steps to comply with both the letter and spirit of antitrust laws.

Antitrust laws are broadly designed to promote competition and the free market – and are based on the core principle that strong competition and free enterprise are critical to producing the highest quality goods at the lowest price for consumers. The overarching principle is that each company should make its business decisions independent of its competitors.

Multi-stakeholder initiatives like IRMA hold a unique place in the market, in that they bring together competitors to work toward a common purpose. Most of these activities do not raise anticompetitive concerns and serve a procompetitive purpose – helping to establish high-bar industry standards that protect the public and improve outcomes for consumers and communities. However, it is important to remember that activities are not automatically insulated from antitrust scrutiny by virtue of being conducted through a multi-stakeholder organization. Further, because these types of groups often convene meetings of competitors, they can draw particular antitrust scrutiny.

One area of concern for multi-stakeholder initiatives is the potential to exchange pricing or other sensitive business information among competitors. Likewise, when an organization collects information on business functions from its members, it faces the risk of serving as a conduit of information between competitors. It is the responsibility

of every IRMA Member to maintain awareness of the contours of antitrust laws and ensure strict adherence to IRMA's Antitrust Policy and to all applicable antitrust and competition laws.

Do's and Don'ts for IRMA Members

This list is not an exhaustive list of prohibited and allowed activities, but rather provides guidance on key points to keep in mind when conducting IRMA business. Any questions or concerns regarding whether certain activities or discussions are prohibited under antitrust laws should be addressed with appropriate legal counsel.

DO have an agenda set prior to any meeting organized by IRMA where competitors and multi-stakeholders are present in a shared space.

DO keep minutes of all IRMA meetings where competitors and multi-stakeholders are present in a shared space, and have all minutes reviewed by appropriate legal counsel if antitrust concerns are raised about the meeting.

DO include the IRMA Antitrust Compliance Statement in presentations or agendas where competitors and multi-stakeholders are present in a shared space.

DON'T discuss or share information on prices – this includes one's own prices or those of a competitor, or any factors related to pricing, including discounts, margins, or sales terms.

DON'T discuss the allocation of territories, markets, bids or customers.

DON'T discuss or share information on sales volumes, sales quotes, market shares, capacity, costs, or production output.

DO be aware that discussions between suppliers and customers can have antitrust implications – **DON'T** become a conduit of competitively sensitive information between competitors.

DON'T discuss or share information on future business plans, including plans for future investments, product development, or marketing and advertising strategies.

DON'T enter into any agreements with competitors, customers, or suppliers to not deal with others.

DO immediately stop any conversation with anticompetitive implications and notify appropriate legal counsel.

DO remember that these guidelines and the Antitrust Compliance Policy apply to both formal and informal meetings and to any social events held in conjunction with IRMA meetings.

Overview of Antitrust Laws

In the United States, the primary antitrust laws that apply to organizations that bring together members of a common industry are Section 1 of the Sherman Act and Section 5 of the Federal Trade Commission Act. These laws prohibit any contract, combination, or conspiracy that unreasonably restrains trade. Additionally, most states have adopted antitrust and competition laws – generally modeled after the federal antitrust laws – which can be enforced at the state level. Beyond the United States, many countries around the world have adopted antitrust or competition laws. IRMA Members must comply with the antitrust and competition laws of any country in which they do business.

The antitrust laws proscribe anticompetitive business activities in broad terms, and courts are left to determine which business practices are illegal based on the specific facts of each case. Some business practices are considered “per se” illegal – practices that are so harmful to competition that they are presumed to be illegal. This category of activities includes explicit agreements between competitors to fix prices, divide markets, or rig bids. Other activities are reviewed by courts using the “rule of reason” to determine whether the conduct’s anticompetitive effects outweigh any potential procompetitive benefit.

Most enforcements of the U.S. antitrust laws are civil, but the statutes do allow for criminal prosecution. Civil suits can be brought by the regulatory agencies – the Department of Justice and the Federal Trade Commission – or by private individuals. In antitrust suits, participation in a multi-stakeholder initiative is often presented as circumstantial evidence of anticompetitive behavior – the fact that competitors are gathering and discussing topics related to their business provides them with the opportunity to enter into or perpetuate an agreement to fix prices or engage in other anticompetitive behavior. As such, extra care should be taken to ensure that activities where members of a common industry are gathered together are conducted in full compliance with all applicable antitrust laws.

Guidelines for Interacting with Competitors, Customers and Suppliers

When interacting with competitors at events organized by IRMA, it is important to be vigilant to the risk of antitrust violations stemming from the sharing of competitively sensitive information. Any exchange of information related to prices or other sensitive business data can raise antitrust concerns. IRMA members should restrict conversations with competitors to IRMA-specific business or social topics and should never discuss competitively sensitive topics with each other. Even when there is no

formal “agreement” reached to restrain competition, improper discussions between competitors about competitively sensitive information can still give rise to antitrust liability.

Specifically, competitors should never discuss the following topics with a competitor:

- pricing,
- pricing strategy,
- terms and conditions of sales,
- discounts,
- credit terms,
- production levels,
- production capacity,
- details of technical developments,
- market shares,
- submitted bids,
- intentions to bid or not bid,
- the allocation of sales territories,[1]
- the allocation of markets,
- the allocation of customers,
- refusals to deal or do business with any competitor, vendor, or supplier, and
- preventing others from gaining access to a market or customer.

In the event that an IRMA Member is approached by a competitor and such topics are raised, the conversation should be terminated immediately, and the issue should be raised with appropriate legal counsel.

It is also important to remember that while conversations between competitors are often the most likely to result in antitrust violations, conversations between customers and/or suppliers can also give rise to antitrust liability. While businesses generally have a right to select who they wish to do business with as customers and suppliers, agreeing with a customer or supplier to refuse to deal with another company is a violation of the antitrust laws. Another concern surrounding discussions with customers or suppliers is the risk of creating a “hub and spoke” conspiracy, where one customer, for example, serves as the “hub” for a conspiracy to engage in anticompetitive behavior among suppliers. A supplier should never ask a customer to

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[1] *Territorial allocation, customer allocation, product allocation each constitute violations of Section 1 of the Sherman Antitrust Act. There is no balancing of procompetitive effects with anticompetitive harms. An example, if competitors collude, conspire, agree that one will only sell in one city and the other in another, they have allocated (meaning divided or split) the territories to avoid competing with one another. The agreement not to compete in certain areas has the effect potentially of raising prices to customers in those areas. Replacing areas or territories with any geographical unit; unlawfully dividing up specific customers; or agreeing to not sell certain products in competition are all prohibited conduct under the antitrust laws.*

share that supplier's pricing or other sensitive business information with another supplier, or ask the customer to acquire another supplier's competitively sensitive information.

In discussions with customers and suppliers, IRMA members should be cognizant that while it is acceptable to discuss the terms of one's own dealings with its customer or supplier, care should be taken to avoid discussing the terms of a customer or supplier's dealings with other companies. For example, Members should refrain from discussing with a customer the price that the customer is charged by other suppliers, discounts received from other suppliers, volumes purchased from other suppliers, etc. Any information that would be inappropriate for competitors to discuss directly with each other should be avoided unless it relates solely to the terms of the dealings between that customer and supplier. Unless necessary to the business of IRMA, discussions regarding competitively sensitive information, whether between competitors or between suppliers and customers, should be avoided at IRMA sponsored events.

IRMA Membership and Audit Process

IRMA Membership should always be based on clear, neutral, and objective criteria, and be open to all interested parties. Exclusionary membership practices that are intended to hamper a market participant's ability to compete raise antitrust concerns and should be avoided.

The IRMA Audit Process serves an important function in advancing the goals of promoting socially and environmentally responsible mining. As part of the audit process, it is necessary to collect information regarding the business operations of the mines being audited. However, care must be taken to limit the data collected to only that information necessary to make a determination on whether a mine meets IRMA's standards. Where possible, avoid collecting competitively sensitive information unless absolutely necessary to evaluate a mine's compliance with the IRMA standard.

In the event competitively sensitive information about a mine must be collected as part of the audit process, such information should not be shared publicly or with competitors to the extent it discloses forward-looking pricing, capacity, business strategy, production levels, or other information that could be used by competitors to achieve anticompetitive alignment in the industry.

Additionally, while IRMA is allowed to encourage purchasers to specify that they prefer to purchase materials from IRMA-assessed mines, care should be taken to ensure that in the first instance, the IRMA assessment process is conducted in an objective, fair, and consistent manner, and secondly, that decisions whether or not to purchase from mines not assessed by IRMA is not done in an anticompetitive way. It should be clear that the business decision of where to purchase materials is not directed by IRMA, the

choice is the purchasers'. The IRMA audit process should not be used as a means to exclude certain industry participants from the market for anticompetitive reasons.

Consequences Of Antitrust Violations

Violations of antitrust laws can result in severe repercussions for companies and individuals. Violations can be prosecuted criminally, and prosecutors can seek hefty fines and even jail sentences for criminal violations. Injunctions can also be sought that restrict a company or association's future conduct. Private individuals who have been harmed by anticompetitive conduct can sue for and receive treble damages – three times the amount of the actual financial harm suffered.

In addition to the potentially severe sanctions, the cost of defending against antitrust claims or government investigations – even when unfounded – can be significant. These types of lawsuits and investigations can be highly disruptive to a business and divert valuable resources away from the business to defend against the charges, even when no violation has occurred. Additionally, government investigations often spur follow-on private litigation, further adding to the cost and time that must be devoted to legal defense.

Antitrust Compliance Statement

The following statement should be read at the beginning of every formal IRMA meeting and included in any presentations given at IRMA meetings:

> *IRMA and its Members and affiliated organizations are committed to advancing social and environmental responsibility in the mining industry. In doing so, we are also committed to complying with all applicable antitrust laws and regulations. As a multi-stakeholder governed initiative, it is crucial that we avoid any discussions that could be construed as anticompetitive.*
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> *To ensure that IRMA activities are in full compliance with the antitrust laws, IRMA Members will refrain from sharing any competitively sensitive business information, including but not limited to pricing, business plans, customer lists, information considered confidential in the industry, or other similar data. Additionally, IRMA does not promote activities used to attempt to limit or restrict competition or exclude market participation.*
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> *Please refer to the full IRMA Antitrust Compliance Policy for further guidance.*