

ANTITRUST COMPLIANCE GUIDELINES

These Guidelines set out a brief list of practical suggestions to assist NI Members in complying with competition or antitrust laws.

The Guidelines are not intended to be comprehensive; rather, they are designed to highlight some of the key areas of concern.

Where any doubt exists about the appropriateness of specific discussions or activities, legal advice should be obtained before they are undertaken.

The Nickel Institute is committed to full compliance with the competition or antitrust laws in all jurisdictions where its Members are active. The Guidelines promote compliance with such laws by providing an overview of areas of legal risk.

All those participating in NI activities (including all Member companies and their representatives, NI staff and consultants) share responsibility for adherence to the Guidelines in committee, board or Members' meetings and other NI activities.

ABOUT ANTITRUST LAWS

In most jurisdictions (including the United States, the European Union and Canada) an agreement or understanding among competitors, which affects competition in any material way is subject to severe criminal penalties and private law suits. Antitrust laws also apply to dealings with suppliers and customers.

The most typical violations of antitrust laws include agreements to fix prices, limit production or divide markets. Antitrust laws of some jurisdictions also apply when export or import trade is affected, regardless of the location in which an agreement is made or implemented. NI itself, its Members and individuals are all potentially at risk if they participate in activities that violate antitrust laws.

At the same time, antitrust laws recognize that not all cooperation among competitors is bad and that some activities may be pro-competitive. In addition, the sharing of competitively-sensitive information for the limited purposes of complying with other regulatory requirements (e.g. information collected within REACH consortia) may be necessary from time to time, with appropriate safeguards.

NI Members can feel confident that their participation in NI will not violate antitrust laws, provided they avoid improper activities. Collaborations of NI Members should occur only to advance pro-competitive goals or to fulfil limited mandates of various working groups.

NI Members should also be mindful of the differences between antitrust laws of various jurisdictions. For this reason, these guidelines are statements of principle. These guidelines are intended to complement, and not supersede, any Member's own specific antitrust guidelines.

MEETINGS

- Members should only attend meetings that have been called in accordance with NI by-laws and for which an agenda has been approved and circulated in advance.
- An NI staff member and/or legal counsel will be present at all NI meetings (including committee meetings), will ensure the agenda is adhered to, and will prepare and circulate minutes of the discussions.
- Legal counsel should always be present at meetings which involve potential competition law sensitivity (whether because of the subjects to be discussed or the people attending - e.g. marketing or senior management personnel).
- Meeting participants should conduct themselves on the assumption that the matters discussed and any documents created could subsequently come to the attention of antitrust enforcement authorities or become evidence in a court proceeding.
- If any Member representative is concerned about the propriety of discussions at a meeting, the concern should immediately be drawn to the attention of the chair of the meeting, an NI staff member or legal counsel in attendance. The discussion will be discontinued until all Members are satisfied that it may properly be resumed.
- Members and their representatives are cautioned to avoid *ad hoc* discussions outside of formal meetings.



RISKY ACTIVITIES AND SUBJECTS

- Any collaboration between Members regarding marketing or other business strategies; discussions related to competitively sensitive information or retaliatory business conduct against any producer, distributor or other commercial intermediary for actions or positions taken.
- The following subjects should never be discussed without prior clearance from legal counsel:
 - present or future prices, cost-structures, terms of sale or important dimensions of non-price competition
 - agreements not to compete, including allocations of customers or territories between companies
 - refusals to deal, boycotts or other actions which would affect customers, suppliers or competition among Members and/or non-members
 - customers' purchases or purchasing plans
 - restrictions of firms' imports into or exports from any country
 - output restrictions or plant closures
 - bids or tenders.
 - Confidential individual company market, production or financial data, such as financial affairs or performance or market shares.
 - Any other competitively sensitive aspect of Member companies' current operations or business plans.
- Members should obtain prior authorization before providing any data or material, which might result in disclosure of competitively sensitive information (e.g. information exchanged within REACH consortia).
- Nickel Institute does not present forecasts or comments on nickel markets, prices or supply and demand. Prior legal authorization is required to deviate from this practice.



PERMITTED ACTIVITIES AND SUBJECTS

- In general, joint lobbying, good faith submissions to regulatory authorities and litigation relative to regulatory performance are not problematic.
- Members may develop scientific information related to mandates of specific working groups, provided this is not a disguise to adversely affect competition.
- Members may obtain information from public sources.



Linda Quirk
General Counsel & Corporate Secretary
lquirk@nickelinstitute.org
www.nickelinstitute.org