

ANTITRUST COMPLIANCE GUIDELINES

The World Steel Association (worldsteel) is an international trade association with high public visibility. The Members of worldsteel represent most of the globe's international carbon and stainless steel output. It is the policy of worldsteel to govern its activities by the standards of the strictest and most developed antitrust principles, principally those of the United States and the European Union. worldsteel also acknowledges that multiple jurisdictions in addition to the US and EU have become increasingly vigorous with respect to antitrust enforcement.

The purpose of these Guides is to ensure that the conduct of worldsteel, its staff and its Members, does not raise antitrust issues in any relevant jurisdiction. Also, various antitrust authorities have recognised that a strong antitrust policy and compliance guidelines can serve as factors in determining whether to pursue investigations. Thus it is the obligation of each Member and of worldsteel staff to be familiar with these Guides and to abide by them.

To assure compliance with these Guides, antitrust Legal Counsel for worldsteel attends Executive, Board and General Membership meetings of both worldsteel and its affiliate, the International Stainless Steel Forum (ISSF). Its Legal Counsel also attends Committee meetings when sensitive antitrust issues may be raised. worldsteel staff members are responsible for antitrust compliance at worldsteel meetings that Legal Counsel does not personally attend. Legal Counsel is available to staff and each Member to respond to any questions or concerns. No worldsteel meetings or conferences are permitted without the presence of worldsteel staff or Legal Counsel.

Why is antitrust compliance so important?

Antitrust law is concerned with monopolisation and concerted activity ("conspiracies") that substantially affect competition. Importantly, trade association activities are presumed to constitute concerted conduct and, where members are in competition to any degree, concerted conduct among competitors. Thus, worldsteel, with a membership of the leading steel companies in the world, must be particularly antitrust sensitive. Because the activities of worldsteel are evaluated as concerted conduct, conduct that is permissible for individual Members or independent consultants may not be permissible or advisable for worldsteel as a trade association. This is the important antitrust legal distinction between concerted activity and unilateral conduct.

It is fundamental that none of the foregoing should deter membership in worldsteel or ISSF, or discourage Members from participation in trade association activities. The courts (including the US Supreme Court) and antitrust enforcement authorities have recognised that legitimate trade association activities can promote competition and efficiency. Furthermore, they can provide industry and public benefits, such as ensuring safety and protecting the environment. In addition, trade association activities can create a better and more informed marketplace, permitting individual Members to determine what makes business sense for themselves, the industry and the public at large. In sum, trade associations can promote the exchange of ideas and vital market information that individual Members could not accomplish on their own.

The World Steel Association as a voice for the international steel industry

One of the prime missions of worldsteel is to inform its Members, governments, and the public on international developments and statistics relating to the steel industry. Trade associations routinely issue industry-relevant bulletins or newsletters. Importantly, given a significant industry issue, trade associations can serve as the "voice" of their industries by presenting position papers and testimony, and by petitioning and lobbying on their industries' behalf before governmental bodies, antitrust agencies, and the public. For example, worldsteel has represented the international steel industry on environmental and irrational subsidy and over-weight capacity issues before governmental organisations, and has been the advocate for the industry in opposing unwarranted supplier consolidation. This type of unified activity is recognised as a fundamental mission of an international trade association, and is consistent with the antitrust laws.

Unilateral decision-making versus concerted conduct

As noted, worldsteel activities are legally presumed to constitute joint conduct among competitors. Such conduct is very different in legal terms from unilateral decisions made by individual Members based on legitimate information provided by worldsteel. worldsteel does not make “recommendations” or “suggestions” or “disguised inferences” to its Members on competitively sensitive topics. Rather, it serves to educate its Members and others on facts and statistics relating to the international steel industry. Individual Members make their own unilateral business decisions based on this information, or information from other sources they deem appropriate. Except as cleared by Legal Counsel, worldsteel and its Members do not agree to take joint industry action on any competitively-sensitive issue.

Appearances versus reality

Trade associations and their members, and even individuals, have at times been prosecuted more for what appears to be a “conspiracy”, rather than what the actual facts may be. Conspiracies can be legally inferred from ill-advised statements, notes or documents made at trade association meetings. The classic example is a statement: “I don’t care what others may do. I am raising prices next week.” These types of statements have been found to constitute conspiratorial conduct where similar price rises by competitors have followed. Such statements can also be viewed as “invitations to collude”.

Thus, comments at trade association meetings, or notes made or e-mails sent, however well-intentioned, can be misinterpreted or misused. A good rule of thumb is to view any comments or notes made at trade association meetings, or discussions at attendant social activities, from the standpoint of a sceptical government investigator unwilling to give the benefit of the doubt, or, if you were under oath at a deposition.

A fire can warm a house; it also can burn down a theatre

Before addressing potential guideline violations, an important caveat is the misuse of legitimate trade association information and functions. Even the best of trade association conduct and intentions can be subverted. Thus, worldsteel and its Legal Counsel must recognise that legal trade association activities may be viewed as a “disguise” or “front” for anticompetitive ancillary activities not consistent with the antitrust laws. For example, subject to specific guidelines established by Legal Counsel, worldsteel may make industry forecasts. Such forecasts are generally global or multi-regional, and have little prospect for competitive abuse. However, antitrust authorities have cautioned that industry forecasts can be misused to implement or monitor cartel behaviour. Thus, it is fundamental to worldsteel antitrust policy that otherwise legal activities can never be used to mask or implement anticompetitive conduct.

worldsteel has worked closely with Legal Counsel to create legal safeguards to any worldsteel forecasts. No forecasts are permitted unless in accordance with these safeguards. worldsteel’s safeguards include: the use of a third party or worldsteel staff in creating such forecasts; limiting access to data; preserving the confidentiality of submitters; “homogenising” (aggregating) data such that the identity and information of submitters is not disclosed; and utilisation of publicly available information, such as that compiled by regional steel trade associations and industry consultant services.

Antitrust – sensitive areas

Theoretically many forms of otherwise neutral conduct could be used to implement a conspiracy to restrain trade. However, the major antitrust-sensitive area for trade associations is *per se* (no defence or justification) violations of the antitrust laws. These areas must be totally avoided and are subject to civil and criminal prosecution in the US, as well as competitor and consumer lawsuits, including class actions. Such conduct is deemed illegal in itself, and applies whether the perpetrators are large or small or, indeed, could realistically bring about the anticompetitive results. US courts have held that the suspect conduct need not take place on US soil. If conduct does not fall in the *per se* categories, it is judged under a standard of “reasonableness”, which generally requires a complex balancing of anticompetitive effects against pro-competitive benefits in a relevant market.

These basic violations are agreements that, directly or indirectly, fix or artificially distort: (a) prices charged to customers, or any component of price (e.g., discounts or payment terms); (b) capacity; (c) production or output; (d) geographical or product markets; and (e) customers or classes of customers. In the US there is an entire body of legal case law spanning over 100 years interpreting these principles. As a precaution, worldsteel follows these rules: (1) current or future steel prices are not discussed by Members at worldsteel functions; and (2) any discussions of present or future capacity or production must be monitored or approved by Legal Counsel. These principles apply both at worldsteel meetings and social events.

Supplier and customer relations

The antitrust laws also apply to dealings between steel companies and (i) suppliers of raw materials, and (ii) their steel customers. The antitrust considerations here are different and less clear. Business interests of steel companies and their suppliers and customers may well differ. Moreover, Members may have equity interests or supply agreements ("vertical relationships") with certain suppliers. These companies must consult their individual legal counsel concerning such relationships.

Some legal observations are relatively clear. First, to date, the difference in bargaining power between suppliers and buyers has been deemed legally irrelevant. Given time, this may change: antitrust scholars and economists have questioned this premise.

Second, concerted conduct by customers against suppliers, such as prices paid, terms of payment, or boycotting suppliers, is highly suspect. (Supplier-imposed terms of dealing may be legitimate industry topics, but must be monitored by Legal Counsel).

Third, there is a significant exemption from the antitrust laws based on free speech and government-petitioning principles. This exemption permits competitors to address suspected illegal activities affecting them, and what remedies to pursue. The application of this exemption is complex, and subject to guidance by Legal Counsel.

Importantly, Members can never agree to "pass on" increased raw material or other costs to customers. Each Member must unilaterally decide what is appropriate in dealing with their customers.

Petitioning governments

worldsteel is globally recognised as a vital representative for presenting common steel industry issues. Petitioning governmental bodies, such as international forums, courts, or government agencies, is an important exemption from the antitrust laws. This exemption permits trade associations to approach and present industry positions to inform governments, and seek aid or redress on important industry issues. Thus worldsteel has participated with the WTO, G20 and other governmental groups on such issues as irrational capacity expansion and steel mill subsidies. Invoking an antitrust exception is subject to strict supervision by Legal Counsel.

Your membership in the World Steel Association

Nothing in these Guides should in anyway discourage Members from actively participating in worldsteel activities. Quite the contrary, worldsteel has adopted these Guides and other safeguards to assure that Members can feel comfortable in attending worldsteel meetings and participating in leadership and Committee work. Further, worldsteel recognises that worldsteel meetings frequently serve as an occasion for individual Members and attendees to conduct legitimate business with each other. Nothing in these Guides prohibits Members from engaging in bona fide commercial transactions attendant to worldsteel functions.

Finally, Members are free and encouraged to consult with the Director General or worldsteel Legal Counsel as to any question relating to antitrust. There are no "foolish" questions.

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May 2012