



ISTA ANTITRUST CODE OF CONDUCT (October 2014)

This Code of Conduct summarises those features of EU competition law which impact upon ISTA's activities. (Competition laws, broadly similar but not identical to those in the EU, apply in over 100 jurisdictions worldwide.)

ISTA is strongly committed to fulfilling all the requirements of competition law, maintaining a fair and competitive environment within the firms, companies or other corporations and financial institutions trading in international iron and steel and steel making raw materials in respect of both physical and non-physical transactions.

Compliance with **competition law is mandatory** and participation in a cartel can be a criminal offence and may result in fines – on an association and/or its members – of up to 10% of the global turnover of the parties involved. The same fines apply to abuse of a dominant position.

Therefore, to protect individual members' own personal interests, those of their company, and ISTA, compliance with competition law is crucial. Competition compliance is also a matter for individual members, who have a duty of self-assessment under competition law.

Rules for the conduct of ISTA business are summarised below.

GUIDING PRINCIPLES

1. Trade associations perform a legitimate function of promoting an industry but can also be a vehicle for the exchange of commercially sensitive information, thereby facilitating collusion.
2. The exchange of member data anonymised and aggregated by ISTA, or historical member data (minimum 12 months old, seek legal advice if less), or of data which is easily available in the public domain, is permissible.
3. Competition law prohibits any agreement or coordination which prevents, restricts or distorts competition. A cartel may be deliberate or may result from exchange of commercially sensitive information giving parties knowledge of competitors' activities as a result of which companies compete less vigorously.
4. Any agreement or practice which results in the fixing of prices, management of production, allocating of customers or markets (including the conduct of tenders), or boycott of any trading party will breach competition law.
5. Abuse of dominant position by a single company (or, exceptionally, companies which are closely linked so as to be 'collectively dominant') is also prohibited.

CORE PROCEDURES

1. Meetings of a body, committee, working group or other form of co-operation within ISTA shall only take place following a written agenda. Meetings shall take place only in the presence of at least one staff member, a member of the Secretariat or an independent EU qualified legal adviser who will advise, under legal professional privilege, on competition compliance and the legality of subjects discussed.

2. At the beginning of all meetings the chairperson shall distribute the agenda and the 'ISTA ANTITRUST COMPLIANCE STATEMENT FOR MEETINGS' which he (or legal representative if one is attending) shall read out (or the sections in bold at least).
3. Minutes will be taken at all meetings convened by the Association. (A minute summarising the discussions is further evidence of the legitimacy of a meeting.) The minutes will be kept in hard or soft copy and retained for 10 years.
4. Discussions should be suspended immediately if a competition concern is identified by the Chairman or the member from the Secretariat and such intervention shall be minuted. (A note outlining topics that may or may not be prohibited is set out in the Annex – Prohibited Topics.)
5. At all Association meetings there will be adherence to the agenda, miscellaneous discussion will be restricted by the Chairman and all matters discussed shall be recorded in the minutes. Should a spontaneous comment prompt any exchange of sensitive company data or market intentions the chairperson should bring such discussion to an end and refer to Guiding Principle 2 on data exchange.

ISTA ANTITRUST COMPLIANCE STATEMENT FOR MEETINGS

This Statement shall be distributed with the Agenda for every ISTA meeting and read out at the outset by the Chairman or legal representative present.

“Discussion at all ISTA meetings is confined to discussions relevant to the legitimate promotion and improvement of the steel and steel making raw materials trade. **Compliance with antitrust law is mandatory and violation of the prohibitions below can be a criminal offence punishable by imprisonment and may result in fines of up to 10% of the global turnover of the company(ies) involved.**

Members SHALL NOT disclose information on, or discuss or reach agreement (formal or informal) on:

1. **Price fixing - actual prices they charge, or intend to charge.** This includes elements of price such as discounts, payment terms and commission you pay agents;
2. **Limitation of production;**
3. **Market sharing - the allocation of customers, territories or product types;**
4. **Bid-rigging - details of bids or the submission or non-submission of bids; or**
5. **Boycott or discussion of trading partners with whom any party may or may not deal.**

For more detail see ISTA Antitrust Code of Conduct - Annex – Prohibited Topics.

Information exchange

Members shall not discuss commercially sensitive business information including but not limited to prices, individual volumes produced or sold, exports by territory, market share, terms of trade including discounts, business plans, or other action such as boycott.

Minuting of Meetings

Each meeting shall be minuted.

Adherence to Agenda

- Each meeting will follow the Agenda.
- Members shall not discuss issues which are outside the scope of the Agenda without the Chairman's prior consent.

Doubt about any issue

If there is doubt about the antitrust legality of any issue raised, the discussion shall be suspended until legal advice has been obtained, or if a legal representative is present he/she will be consulted and the discussion shall be separately minuted.

Secret meetings

Secret meetings held at the time of the meeting must be strictly avoided.

ANNEX - PROHIBITED TOPICS

PROHIBITED TOPICS

Discussion of the following topics is prohibited at all Association meetings:

- Sale prices, price rates, intended price adjustments, recommended prices, discounts, mark-ups, component prices and other price-related topics concerning the products or services of member companies.
- Division/sharing of the market -e.g. by allocating a specific geographical area, specific customers or groups of customers to specific members.
- Intended or planned restrictions on production or sales.
- Pre-consultations with respect to invitations to tender and/or agreeing that all competitors add a surcharge to their bid (to be used for “compensating” the bidding costs of those companies not winning the tender).
- The incorporation of agreed cost levels into the cost or pricing strategy of competitors.
- The exchange of commercially sensitive market information by individual members e.g. information about production, turnover, sales, investments, divestments, R&D expenses and other information relating to the marketing strategy for specific products or services.
- The content or administration of warranties or guarantees accompanying products placed in the market by members in so far as such discussions may limit competitiveness.
- The assessment and declaration of average price or of the price bandwidth within a given sector.
- Boycotting specific suppliers or customers.
- Collective discrimination on the terms and conditions on which customers or classes of customers are supplied
- Exclusionary or discriminatory Association membership criteria.
- Discussion of any topic that could lead to the co-ordination of market behaviour leading to a restriction on competition.

TOPICS THAT CAN PRESENT A PROBLEM

The following topics are not prohibited but are potentially liable to breach of competition law, particularly when there are a limited number of market players (an oligopoly). Consultation with a person informed on the working of competition law is advisable:

- General terms and conditions of sale and delivery. If discussions relate to competitive elements in the terms and conditions such as prices, added costs and charges, manner of indexation, competitive after-sales services etc, there may be competition issues. Competition authorities may object to the use of agreed terms and conditions being made mandatory.
- Restrictions on participation in trade fairs. As a general rule each member should be free to participate in any trade fair without restriction or sanction. Limitations on participation are feasible in particular circumstances e.g. as an act of collective bargaining to reduce stand space charges.
- Schemes setting membership/recognition criteria. These only become significant from the point of view of competition law if the supplier's membership of ISTA is decisive for potential customers when choosing a product or service.
- The Secretariat is allowed in principle to collect commercial information about individual companies and to make the information available to members on an aggregated basis. The Office of Fair Trading: *"The exchange of statistical data, market research, and general Industry studies are unlikely to have an appreciable effect on competition provided that the information exchanged relates to opinion and experience and does not enable confidential or sensitive business to be shared. In general the exchange of information on output and sales should not affect competition provided that it is sufficiently historic and cannot influence future competitive market behaviour"*
- Any codes of conduct or best practice benchmarking schemes must not limit the freedom which members have to compete with each other.

TOPICS THAT DO NOT PRESENT A PROBLEM

Activity by ISTA and discussion and consultation in the following subject areas will not normally present any problems under competition law provided prohibited topics are avoided:

- General cyclical economic data and business climate, as long as discussions on these topics do not relate to individual company behaviour. These discussions should focus on the macro level and not affect any company's behaviour on the market.
- Conducting and circulating market research and general industry studies.
- Lobbying activities relating to general interests in the sector and concentrating on legislation and other public issues that may affect the industry.
- Industry training and employment issues. These Subject areas are normally considered irrelevant under competition law.
- Legal issues. By definition these issues are of a general nature as they apply equally to all members' activities and the market.
- Standardisation issues. Consultation on the making of manufacturing standards will not invite investigation if (i) the standard creation procedure is transparent and open, (ii) there is no obligation to comply with the standard, (iii) access to the standard is provided on fair, reasonable and non-discriminatory terms and (iv) any discussions about the standard-setting procedure are restricted to technical aspects.
- Safety and health issues. The Association maintains a constant interest in enhancing safety and health with respect to the use of the sector's products.
- Environmental issues in so far as they relate to the manufacture, distribution and use of the products marketed by the membership.