GLOBAL MINING GUIDELINES GROUP

GMG

Antitrust Compliance Guide

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Introduction

The Global Mining Guidelines Group (GMG) facilitates global mining collaboration on solutions to common industry problems, needs and technology through standards, guidelines and best practices. GMG operates on the five principles of inclusivity, collaboration, innovation, optimisation and technology.

The GMG is a committee of the Canadian Institute of Mining, Metallurgy and Petroleum (CIM). Founded in 1898, CIM is the leading technical society of professionals in the Canadian Minerals, Metals, Materials and Energy Industries.

CIM has always maintained three main objectives:

- to facilitate the exchange of knowledge and technology
- to foster networking, professional development and fraternity
- to recognize excellence and outstanding achievements in the minerals industry

GMG is legally part of CIM and GMG must adhere to CIM's bylaws and audits. The GMG Antitrust Guide follows and is in compliance with the Canadian Institute of Mining, Metallurgy and Petroleum (CIM) Competition Law Compliance Guide which is attached to this guide.

The GMG, its Council, Working Groups and all committees will comply with all domestic and foreign applicable antitrust laws.

It is recognized that trade associations perform legitimate and useful functions in our economic system. However, because trade associations are usually composed of competitors, they need to take precautions to ensure that their activities fully comply with all applicable laws. The main antitrust risk is that the association meetings may be used as a "cover" for prohibited activities, or otherwise lead to anticompetitive outcomes. Antitrust laws can also be breached where the anticompetitive effects are an unintended by-product of legitimate action.

Given the complex nature of antitrust laws, to ensure full compliance and to protect itself, its participants, the GMG has authorized the issuance of this Antitrust Compliance Guide (Guide). The Guide is intended to help GMG's participants recognize situations that might have antitrust implications and to provide guidance on how to observe antitrust laws in practice. **However, the Guide is not intended to cover every possible scenario that might arise or to replace legal advice that member companies may receive from their individual counsel. If you have any questions with respect to this guide, please contact the GMG's Managing Director or GMG Chair.**

Those participating in GMG activities at all levels, including Working Groups, Subcommittees, Project Teams, Steering Committees, Governing Council, etc., need to proceed with caution to ensure full compliance with antitrust laws. Violations of such laws can result in severe criminal as well as civil penalties for individuals as well as their employers.

REMEMBER: Both your company and you as an individual can be prosecuted for violations of antitrust laws.

General Guidelines

Participants in GMG activities should be mindful of the following types of activities that can create antitrust risks:

- ***exchanges of information:*** Participants will likely want to exchange different kinds of information for a variety of reasons (for example, to inform and facilitate formulation of harmonious regulatory practices) most of which will not be problematic but some of which could potentially result in a breach of competition laws. Part 3, Section 1.1 below explains in further detail what kind of "sensitive" information should not be exchanged;
- ***discussions that take place in the margins of association events:*** discussions in the bar, on the golf course, etc. can also result in a breach of the antitrust laws if they have an anti-competitive object or effect. Indeed, it is these discussions in the shadow of the main association event that often feed competition authorities' suspicion of trade or industry associations; and
- ***"decisions" or other collective output:*** resolutions or other forms of decision taken by the GMG could be regarded as agreements for competition law purposes. Many such agreements will not be a concern for the competition authorities but those with an anti-competitive object or effect will be.

In addition to the general guidelines set forth below, Participants should also avoid having "front line" members of their sales/marketing teams (i.e. people who conduct negotiations with customers) involved in the activities of the association, if at all possible. This will provide further assurance that no "sensitive" information will unintentionally be disclosed to other industry players. If this is impractical, however, such "front line" employees should be particularly careful in ensuring compliance and remember at all times that they should avoid even the appearance of antitrust concerns.

The following are some general guidelines which apply in all situations and are intended to minimise the risk of a breach (inadvertent or otherwise) of the antitrust laws:

DO NOT agree with your competitors or suggest or hint within their hearing they should adhere to:

- specified output levels;
- leave certain customers to supplier A and other customers to supplier B;
- that you will not market products in country A in the expectation that others will "leave you alone" in country B; and
- not to serve certain customers who take certain actions or refuse to adhere to certain conditions.

DO NOT discuss with competitors or in a forum in which competitors can overhear:

- Your company's pricing/rebates policy;
- Prices that you have recently offered or plan to offer to specific potential/actual customer or any other customer-specific information;
- Costs and production data;
- Tendering processes that your company is willing to take part to;
- Other terms and conditions which you use to compete against your competitors;
- Your company's confidential strategic plans;
- Your company's forthcoming marketing activities;
- How your company would react to certain market events;
- Anything else you would not want your competitors to know if you wanted to compete against them as vigorously as possible (Competitively Sensitive Information).

The examples of Competitively Sensitive Information set out above are not exhaustive. In determining whether information is competitively sensitive, a good rule of thumb is to ask whether (1) the information is of the type that you would not normally want a competitor to know if you want to compete vigorously against that competitor, or (2) a customer or supplier would object to your sharing of such information with your competitors.

These guidelines apply to all GMG activities, including to any governmental lobbying and standards-setting activities (the latter are discussed more fully below).

Information Exchanges – Procedural Safeguards

The GMG, its Governing Council, Working Groups and all committees will take the following precautions whenever collecting any participant information (for example, to prepare a market report or a submission to a government agency):

- Before any information is exchanged, ensure all participants are clear as to what kind of information can be exchanged and what it can be used for;
- Protect the confidentiality of all Competitively Sensitive Information by identifying a GMG employee or group of employees to act as a collecting point for information from all firms (the so-called "black box") and ensuring that no submitter has access to any other submitter's information.
- Ensure that only sufficiently historical Competitively Sensitive Information is collected and aggregate and anonymize any Competitively Sensitive Information before distributing it to participants such that no individual submitter's information is made available to others or may be deduced from the information provided.
- Ensure that, in general, information, including email communications, are channeled through the GMG to the maximum extent practicable.

Guidelines Related Activities

Setting industry recommended guidelines, including standardised terms of business, is fine where it simply reduces transaction costs and increases efficiency in supply and demand chain relationships (e.g. where because vendors agree on a set of standard "boilerplate clauses" for contracts, these do not necessarily have to be negotiated from scratch in each case, saving on employee time and external counsel fees). However, there are a number of issues to look out for to avoid inadvertent breach and, accordingly, any GMG standard and guidelines setting initiatives will comply with four general rules:

- Participants and third parties will be allowed to develop alternative guidelines or to commercialise non-complying products;
- any guidelines will be technologically neutral; where different guidelines are feasible, the final choice will follow an open discussion across the industry and will be supported by a reasoned explanation (e.g. significant inefficiencies arising from the alternative technology);
- the scope of the agreement will not exceed what is necessary to ensure the purpose of the standardization (e.g. technical compatibility, certain level of quality and/or security); practices exceeding these ends are likely to amount collective boycotts against non-complying products; and
- third parties should have access to the guidelines on fair, reasonable and non-discriminatory terms.

Ask: would actual/potential players face difficulties in maintaining their ability to compete in the market if this new standard or guideline set (e.g. because they will not have access to the technology necessary to comply with this new standard or guideline)? If so, the standardization agreement is likely to give rise to competition concerns.

The general rules above also apply to document standardization. Standard terms and clauses may limit the negotiating power of the counterparty, may operate in a way that leads to the exchange of pricing information or facilitates price fixing, and that following the standard wording may be seen as obligatory for market participants. To minimize antitrust concerns, any GMG standard form documents should always include the following prefatory notes:

- This form was prepared by the GMG for general use by the mining, metallurgy, and petroleum industries in order to simplify and facilitate negotiation of this type of agreement.
- Transaction parties, whether or not participants of the GMG, may utilise this form if and when they deem fit.
- This form is not intended to mandate adoption of specific provisions and parties are free to modify any or all of its terms when negotiating specific agreements.

Guidelines

This Compliance Guide is a set of guidelines for GMG staff and participants.

1. A written agenda should be prepared byGMG staff or committee Chairperson, reviewed by GMG's legal counsel when considered necessary or appropriate, and given to attendees in advance of each Annual, Board, or committee meeting, if, possible, or at the beginning of the meeting.
    a. Agenda items should be specific and avoid broad and risky topics such as "marketing practices" or "future production."
    b. Agenda items should not be open-ended (e.g., no "all other matters" or "hot topics" items). The key question to ask when considering agenda items is whether any item can be later misconstrued by a regulator or a private plaintiff.
    c. Adhere strictly to the written agenda. In general, subjects not included on the agenda should not be taken up. If new subjects are raised, they can be put on the agenda for a future meeting, if appropriate.
2. Minutes of every meeting are to be prepared byGMG staff promptly following the meeting. They should include a list of attendees and a concise and accurate summary of substantive matters discussed and of any actions taken.
    a. Minutes should be clear and unambiguous, and should briefly explain terms or phrases that might be subject to misinterpretation.
    b. Preparers of minutes should bear in mind that those minutes might be examined at some future time in either an investigation or a litigation context. When appropriate, draft minutes should be reviewed by the GMG's legal counsel prior to being finalised.
3. GMG's files for everyGMG meeting should include the notice of the meeting sent to invitees, the agenda, a list of attendees, and the minutes of the meeting.
4. GMG staff members, Governing Council members and participants should also apply the "clear and unambiguous" standard to all their oral and written communications relating to GMG. Facetious remarks can be interpreted incorrectly and affect the outcome of litigation; innocent intentions, of themselves, cannot be relied on as a defense. Assume that anything you write may someday be examined by a government prosecutor or an adverse party in a private litigation.
5. Some subjects are obviously more antitrust-sensitive than others, and discussions of some matters at GMG meetings could raise serious antitrust questions and should therefore be avoided altogether.
6. GMG's staff shall attend all meetings and carefully monitor the course of discussions and address any antitrust-related questions or issues raised by participants. Where it appears that

matters of antitrust sensitivity might arise at a meeting (e.g., if any discussion appears likely to stray into prohibited or particularly sensitive areas), theGMG staff and the appropriate committee chairperson will end the discussion and raise the matter with legal counsel.

7. Under no circumstances should any “off the record” remarks be permitted at meetings.
8. GMG will not sponsor or in any way encourage or condone “splinter” gatherings at the GMG meeting or meetings held after the GMG meeting. All GMG business affairs, and particularly those dealing with potentially antitrust-sensitive issues, must be confined to formal meetings at which accurate minutes are kept and for which an advanced agenda has been prepared.
9. WhereGMG meetings involve senior management or marketing personnel, or involve subject matter that is potentially sensitive under the antitrust laws, the GMG staff and legal counsel should be consulted. It may be concluded that legal counsel, along with a GMG staff person, should attend the meeting to assist the Chairperson in conducting the meeting in a proper fashion.
10. The establishment of industry guidelines and best practices is an open process and subject to the public domain considerations. Each of theGMG participants IP Policies establishes that certain rights are granted by participants to use their contributions without obligation. As such, all correspondence and publications will be reviewed by the Executive Council to ensure compliance. Responsibility for compliance rests with every member and participant of this group along with any invited guest or participant. Suspected violations of this notice should be communicated to the group leadership.
11. This notice shall be reviewed at the beginning of each major meeting of the group. In case any participant feels that there is an issue in this regard, all participants are honor bound to escalate that concern to the Governing Council of the Global Mining Guidelines Group.

Antitrust Compliance Dos and Don'ts

The policy of the Global Mining Guidelines Group (GMG) calls for its participants and staff to adhere to the letter and spirit of all applicable antitrust laws in connection with all GMG activities. The consequences of violating the antitrust laws are extremely serious. Penalties include prison terms, large fines, multi-million dollar civil suits, and enormous legal costs and expenses.

Accordingly, to ensure antitrust compliance, all participants and GMG staff should familiarize themselves with the Antitrust Compliance Guide. The following is a ready-reference summary of dos and don'ts to assist participants and staff in assuring that their activities comport in all respects with the requirements of the antitrust laws:

1. **DO** prepare and circulate written agendas for all GMG Annual, Board, and committee meetings, and any other meetings that may entail roundtable discussions among competitors. Conduct all such meetings pursuant to the previously prepared written agendas, and prepare clear, concise, accurate, and unambiguous written minutes of each such meeting.
2. **DO** avoid all loose, facetious, or careless remarks, especially those in writing, that could be misconstrued as posing antitrust problems if read out of context.
3. **DO** review all matters of potential antitrust sensitivity with the GMG Executive Director or other designated staff person. Such matters would include, for example, any proposed discussion of prices, limitation or allocation of production, division or allocation of markets or customers, and boycotts or refusals to deal with prospective customers. When in doubt or when otherwise appropriate, GMG staff will review such matters with legal counsel.

1. **DO NOT** engage in any discussions with or among any competitors, regarding prices, costs, sales, margins, plans, schedules, bids, transportation rates, terms of sale, or any marketing or competitive information that could affect pricing.
2. **DO NOT** engage in any discussions with or among competitors which relate to customers, sales territories, production, capacity, amount of reserves, output, or any other information relating to production or output.
3. **DO NOT** exchange or discuss any other confidential statistical or financial information of any company.
4. **DO NOT** discuss the advantages, desirability, or possibility of eliminating or impairing any competition, whether existing or potential, foreign or domestic.
5. **DO NOT** assume that foreign sales or production are not subject to your country's antitrust laws.
6. **DO NOT** guess. When in doubt, get help-consult with GMG staff and legal counsel.