



# WBCSD Antitrust Compliance Policy

Approved by the WBCSD Executive Committee in October 2019



## WBCSD ANTITRUST COMPLIANCE POLICY

WBCSD is committed to full compliance with all laws, regulations, and ethical standards, for all jurisdictions in we operate. Compliance with both the letter and spirit of the antitrust and competition laws is an important goal for WBCSD and its Members and is essential to maintaining WBCSD's reputation for the highest standards of ethical conduct and advancing the goals of the association.

The Members of WBCSD come together to co-create and collaborate in programs, projects and events with the aim of making their respective businesses more sustainable. It is recognised that these engagements bring Members into close contact with other Member companies, very often competitors in their own business sector. All staff and Members must be sensitive to the unique legal issues that may arise through this engagement and take the necessary steps to comply with applicable antitrust and competition laws. Specifically, each Member agrees to be bound by the provisions of the Antitrust Policy detailed below as amended from time to time.

### 1. INTRODUCTION

Competition laws are intended to preserve competition by prohibiting concerted practices that restrict competition, including agreements between enterprises and decisions by trade associations. Trade associations can provide great benefits to the marketplace and to consumers. But because they may involve groups of competitors working together on common industry issues, as is the case with WBCSD's work, trade associations are subject to particular antitrust scrutiny.

This policy sets forth the basic competition law principles that the staff and Members of WBCSD will comply with in all WBCSD activities including when preparing, organizing and attending meetings. It has been approved by the executive committee.

Compliance with this policy is required by the Code of Conduct for WBCSD employees and is included in the Membership Conditions applicable to all WBCSD Members.

WBCSD takes responsibility for the compliance of its staff. However, it is each Member's responsibility, not the responsibility of WBCSD, to ensure the compliance with competition law by the Member's own staff, seeking legal counsel where necessary.



## 2. GENERAL PRINCIPLES

The following are the most serious infringements of competition law:

- Price fixing, including agreeing discount or rebate levels, or resale price maintenance;
- Bid-rigging;
- Group boycotts; and
- Allocation of customers or markets.

You should also be aware that participating in certain types of association activities, if undertaken with an anticompetitive motive, may give rise to antitrust liability:

- Discussions in meetings;
- Information exchange / data collection;
- Working groups and projects
- Standard-setting and self-regulation; and
- Membership issues.

It is important to remember that unlawful behaviour can be found even without a written agreement or a "handshake". Tacit understandings, including responding to pressure, exerting pressure, or doing "what is expected", can be sufficient. **YOU CAN VIOLATE THE ANTITRUST LAWS BY AN INFORMAL VERBAL OR NON-VERBAL UNDERSTANDING; EVEN BY MERE COMMUNICATION OF INFORMATION. NO WRITTEN CONDUCT OR EXPRESS AGREEMENT IS REQUIRED.**

## 3. CONDUCT OF MEETINGS

- a. Every meeting shall have a specific, demonstrable purpose. An agenda will be circulated to all members before the meeting. The agenda shall be reviewed by legal counsel where necessary and shall be closely followed during the meeting.
- b. Each meeting shall be recorded accurately by minutes, and these shall be circulated to all members promptly after each meeting. Minutes of each meeting shall be reviewed by legal counsel where necessary prior to circulation. They will be retained permanently by the Association for its records.
- c. All participants attending WBCSD meetings are required to be fully familiar with the Antitrust Policy.
- d. The Antitrust Reminder shall be the first point of each agenda. At the start of each meeting the chairman of the meeting shall read the Antitrust Reminder aloud and the minutes shall record that this was done.
- e. Members' own legal counsel shall have open access to be present during any meeting at which their member representative is present, including meetings of the Executive Committee and Council, and shall have unrestricted access to the minutes of any meetings to which the Member representative was invited, whether the representative attended or not.



- f. If the agenda of any meetings makes it advisable, a competition law specialist may be invited to attend in order to ensure compliance with applicable competition laws.
- g. If a meeting participant is uncertain whether a discussion or conduct raises competition law issues, the discussion on the subject should be suspended until the point is clarified, either by those present or legal counsel. In case of doubt, the discussion shall be suspended indefinitely. The suspension and subsequent treatment of the matter shall be recorded in the minutes.

The *Antitrust Reminder* is attached as an attachment to this policy.

#### 4. PROHIBITED SUBJECTS

Members should never discuss or exchange information on *commercially sensitive subjects*. “Commercially sensitive information” is defined as company-specific information which, if exchanged, could influence competitors’ future conduct. It refers to, but is not limited to the following:

- a. Price information: selling or purchasing prices, including not only actual prices charged but also the elements of pricing and pricing policy, for example, costs, discounts, promotional terms and trade terms;
- b. Price changes or present or future trading conditions;
- c. Capacity, costs or production output;
- d. Plans relating to future business, investment, product, marketing and advertising strategies;
- e. Purchasing or bidding plans or other commercial strategies;
- f. Sales volumes or values, or sales quotas;
- g. Market shares;
- h. Proprietary technical development;
- i. Individual dealings with customers or suppliers or buying associations including the status or content of yearly negotiations; and
- j. Proposals for joint market conduct regarding specific companies, including customers, suppliers and other industry participants, including boycotts and blacklists.

**Conduct at social events in conjunction with WBCSD meetings or otherwise should follow the same standards as more formal meetings. Communications between members using any WBCSD website or platform are also subject to this policy.**

It is recognized that, on occasion, there may be legitimate doubt as to the proper interpretation of the law. In such a circumstance, the precautionary principle should be used, i.e. it should be assumed that the matter is prohibited and that particular discussion should therefore be ended.



## **5. COLLATION AND DISSEMINATION OF INFORMATION**

In some strictly defined cases, information may be collected and aggregated and then shared anonymously by an independent third party in such a way that individual company information is not identifiable. This will only happen in accordance with strictly controlled procedures supervised, if necessary, by legal counsel.

Members must under no circumstances share confidential or commercially sensitive information from or about other Members.

## **6. WORKING GROUPS / SEMINARS / PROJECTS**

Working groups, seminars, projects and all other groups coming together from time to time remain fully subject to antitrust law. Therefore, such groups are required to follow this policy in the conduct of their meetings and related activities in the same way as any other meeting.

## **7. STANDARD-SETTING AND SELF-REGULATION**

Part of WBCSD's role is to engage in developing industry sector standards, tools and guidelines around sustainability issues that have value to Members as well as society more generally. Such initiatives must not, however, unduly restrict competition. Any association codes or standards must be based on sound, objective justifications. They must be based on an open and transparent process, allowing participation by all. Any standards should be set on a non-discriminatory basis and should be objectively necessary to achieve the aims of WBCSD.

## **8. MEMBERSHIP**

Members' participation in WBCSD meetings is encouraged but voluntary. No one should be pressured to participate or penalised for not doing so.

WBCSD members remain free at all times to join other initiatives, alliances or associations.

Although membership of WBCSD is on an invitation basis, it is in principle open to all companies with a desire to improve their sustainability on a nondiscriminatory basis.

WBCSD members shall not be restricted in any respect in the ways they decide to conduct their businesses. All actions of members remain voluntary. Each individual member remains free to make independent, competitive business decisions.



## **9. WBCSD STAFF**

WBCSD staff who are involved in convening, running or otherwise participating in WBCSD meetings will be given regular specific training on compliance with competition law.

The WBCSD Code of Conduct requires staff to comply with competition law in general and this policy in particular.

## **10. SANCTIONS**

Any member or representative of a member who does not conform with any competition law provision and, in particular, with any of the principles set forth in the present policy may be asked by any other member(s) to leave the meeting where the infringement occurs. Any such member or representative may be temporarily or definitively excluded from participating in the meetings.

Any staff member who does not conform to any competition law provision and, in particular, with any of the principles set forth in the present guidelines may be liable to be dismissed in accordance with WBCSD's employment contracts and procedures.



## ATTACHMENT – THE ANTITRUST REMINDER

### INTRODUCTION

Set out below is the reminder to be included in all WBCSD meeting agendas for meetings where members are present and to be read at the start of each such meeting. The aim of this is to focus the attention of all participants on the antitrust law requirements. The statement should also be recorded in the minutes as indicated below.

### THE WBCSD ANTITRUST REMINDER:

*“Please note that taking part in this WBCSD meeting is subject to you being familiar with antitrust issues and how to avoid them. As a reminder, we must all refrain from entering into any discussion, activity or conduct that may infringe any applicable competition law. By way of example, we shall not discuss or share any commercially sensitive information, such as information relating to prices, trading terms and conditions, production performance, or marketing strategies. This applies at all times, not just during the formal session, but also any time we interact. If you are not familiar with antitrust issues, please read the WBCSD Antitrust Policy at your earliest convenience.”*