ArcelorMittal

ArcelorMittal antitrust compliance guidelines for Europe

January 2007

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INTRODUCTION

ArcelorMittal competes vigorously for the business of its customers. Most of the many countries where ArcelorMittal is active have competition or antitrust laws and trade regulations designed to protect such competition. ArcelorMittal is committed to comply with all competition and antitrust laws and regulations.

The obligation to comply strictly with all local, national and international laws and regulations applicable to its business, including antitrust and competition laws, is also contained in ArcelorMittal's Code of Business Conduct where it is written that

> "ArcelorMittal is committed to strict observance of the competition and antitrust laws ofthe countries in which it does business and to the avoidance of any conduct that couldbe considered illegal."

Specifically, it is ArcelorMittal's policy to make its own commercial decisions on the basis ofwhat we consider to be in the best interest of ArcelorMittal, completely independent and free from any understandings or agreements with any competitor. This policy requires the absolute avoidance of any conduct which violates, or which might even appear to violate, those underlying principles of the competition and antitrust laws which forbid any kind of understanding or agreement between competitors regarding prices, terms of sale, division of markets, allocation of customers or any other activity that restrains competition. It is also ArcelorMittal's policy to adhere strictly to all rules governing other forms of commercial conduct that are outlined below.

Accordingly, it is the responsibility of each and every officer and employee of ArcelorMittal to understand these rules, and to seek help from the Legal Department if and when there is any question or doubt as to what the rules are or how they are applied in a given situation.

No officer or employee, whatever his/her position, is authorized to depart from ArcelorMittal's policy or to condone a departure by anyone else. Strict compliance with this policy is expected and it should be understood that management will take appropriate disciplinary action with respect to anyone who violates it. Please note that a violation of European and/or national antitrust law may result in significant criminal and civil penalties for ArcelorMittal and individuals alike, including prison terms for individuals. Violations may be prosecuted under European antitrust rules as well as under national laws by criminal or civil actions.

The applicability of the antitrust laws in some situations is clear and unmistakable. Their applicability in other situations is less certain. In each case, however, employees are obliged to observe the laws in the day-to-day conduct of their affairs, whether they have had legal training or not. Accordingly, the advice of the Legal Department should be sought in every case where there is any cause for doubt. In addition, officers and employees should be aware that national rules within Europe are in some instances more stringent than the European rules set out in these European Compliance Guidelines.

Please note that if officers or employees in Europe also conduct business in the US or Canadaor with North America-based entities, they should also familiarize themselves with the Compliance Guidelines for North America because both U.S. and Canadian antitrust laws reach conduct outside the United States/ Canada that affects trade in or into the United States/Canada. Similarly, specific rules may apply to other jurisdictions. Whereas the principles of the guidelines should give a sense of the likely issues, it is advisable to consult the Legal Department when dealing with unfamiliar markets and jurisdictional systems.

These guidelines explain the basic principles of antitrust and competition law. Please note that they do not deal with the specific rules applicable to mergers & acquisitions, joint ventures, IP licensing or State aid. Consequently, the Legal Department should be contacted for all questions relating to such matters.

FORBIDDEN CONDUCT

EU antitrust laws are aimed at conduct that interferes with the normal economic effects of demand and supply in a free market on such matters as price, volume of production, marketing territory, sources of supply and channels of distribution.

What one company does unilaterally in the conduct of its business, particularly as it relates to commercial policy on pricing, other terms of trade and the selection of customers or business that it pursues, is in many cases unlawful when undertaken on the basis of arrangements or agreements with others.

Agreements between two or more competitors most commonly raise antitrust risks, but agreements with suppliers, distributors or customers may also run afoul of the antitrust laws.

Equally, arrangements between parties to a joint venture, and between ArcelorMittal and companies in which ArcelorMittal holds minority participations, are also covered by the prohibitions in antitrust law.

Antitrust law applies even where there is no formal (oral or written) agreement: An "agreement" that violates antitrust law may be inferred from circumstantial evidence (concerted conduct). Contracts containing an illegal clause (e.g., market sharing or too extensive exclusivity) may be held altogether unenforceable, even as to those provisions which are lawful.
In addition to prohibiting agreements or arrangements between two or more competing entities, the law also prohibits certain unilateral "abusive" conduct by a "dominant" company. Generally speaking, a company acting independently can act as it chooses, unless it becomes so dominant or large in a given market that it is considered to have "special duties" to its competitors, suppliers and customers. These may prevent a company from "beat-the competition" discounting, bundling of product ranges, or other commercial arrangements intended, to make life more difficult for competitors.

Thus, in Europe there are broadly speaking three types of practices and/or arrangements that qualify as interfering with the normal economic effects of demand and supply and that should be absolutely avoided:

(i) Contacts with competitors that result in agreements or concerted conduct, whether in writing or otherwise, that interfere with the operation of a free market;

(ii) Arrangements with customers and suppliers that contain certain terms and conditions (for instance, market partitioning along national lines); and

(iii) Conduct by which a "dominant" company abuses" market power in a particular product market.

What follows is a more detailed description of the conduct that may violate European antitrust laws, and guidelines you should follow in your everyday business practices to prevent or reduce antitrust risk for you and ArcelorMittal. The Guidelines are intended to help you identify issues and assist you in achieving complete compliance with the law. Whenever you have any doubt about whether a practice is antitrust compliant, you should consult the Legal Department.

I. CONTACTS WITH COMPETITORS

Any agreement or arrangement with a competitor is unlawful if it relates to:

- the price of a product (including base price, extras, transportation charges or other terms of sale which relate to price, such as credit terms, cash or trade discounts, etc., and irrespective of whether the arrangement is to increase the price or to decrease it);
- limiting production or capacity (as to either the amount or the type of product);
- allocating customers (e.g., bid-rigging), or sales territories (e.g., market partitioning), or agreeing on which company will sell what product; or
- refusals to deal (e.g., boycotts) with either a potential customer or a potential supplier. These arrangements are considered unlawful irrespective of any consideration of justificationsor efficiencies. Moreover, the most severe antitrust penalties, including in some countries, criminal liability, are applied to these types of violations.

The risks in this area are complicated by the fact that the common economic pressures that apply to all competitors in the same market often produce parallel conduct in the marketplace.
While this parallel conduct may well be entirely lawful, it regularly attracts the attention of antitrust enforcers and may cause an investigation in particular where the conduct is accompanied by evidence of communications and contacts between and among competitors. Accordingly, it is of the utmost importance to avoid any contacts with competitors that might support an inference or allegations of collusion.
This means that any contact with competitors that you may have should always be conducted as if they were at all times in thepublic view so that no one can question the intent or outcome of such contact with competitors.

Joint venture agreements with competitors may produce useful efficiencies, but can also restrain competition. You should always consult the Legal Department before entering into any such agreement.
Always apply the following principles in your contacts with competitors:

1. Individual Conversations and Contacts with Competitors

Avoid individual conversations with competitors entirely if you can, and by no means ever discuss or disclose commercial policy such as pricing, customers, plans or terms of trade with a competitor. If in any conversation, your competitor seeks to discuss current prices or enquire into plans for future prices, or any of the elements of prices, or any element of strategy relating to prices and/or commercial policy you must refuse to discuss that subject.
Divorce yourself immediately from any conversation that veers towards any of the subjects above. Walk away or hang up the telephone if that is what it takes to end your involvement (even listening) in the discussions. Make clear to the participants that you refuse to participate in such discussion and that you will have to report the discussion to your legal department. If you allow yourself to hear such a conversation you may be required, at a later date, to testify that it did take place and it will be hard to avoid the implication that you were an active participant in it.

It may at times appear to you that essential competitive information as to existing price structures and commercial policy can only be obtained from a competitor, and that a discussion of existing prices with them is therefore justified. Don't ever do it: An exchange of current price information alone may be found unlawful, and for this reason you must not engage in, or reply to, any such inquiries. For example, do not confirm with a competitor price information that you may have received from another source (i.e., a customer).

DO make it clear at all times to your competitor that you cannot and will not discuss competitively sensitive information.

DO immediately object to any discussions that relate to subjects outlined above; continue only if objectionable discussion ceases, and when you are comfortable the discussion has resumed a proper direction.

DO report immediately to the Legal Department any improper discussion with, or overtures by, a competitor.

DO protect the confidential business information of ArcelorMittal.

DON'T ever discuss prices, other terms of trade, customers, bids, or plans.
This includes conversations regarding:
- individual company prices, price changes, price differentials, markups, discounts, allowances, credit terms or data that bear on price, costs, production, capacity, inventory or sales; as well as
- industry pricing policies, pricing levels or price changes.

DON'T even discuss with a competitor the state of the market in which you operate.

2. Trade Associations

Trade associations perform useful and legitimate functions, and can be supported by the members of an industry under appropriate circumstances. Trade association meetings, however, provide opportunities for both formal and informal gatherings of competitors and, consequently, expose each person and company present to the risk of an inference of collusion if such gatherings are followed by parallel action.

Accordingly, ArcelorMittal employees are not permitted to join any trade association unless management has determined that the association serves an important and proper purpose and approved the membership application. In case of any doubt, the Legal Department should be consulted.

Membership in trade associations should be periodically reviewed by management. When attending trade association meetings sanctioned by ArcelorMittal, the guidelines above with respect to contacts with competitors must be strictly followed. In addition, in the trade association context, special precautions should be undertaken:

DO consult with local management before joining a trade association and obtain the required approval from the Legal Department.

DO insist on a complete draft agenda well in advance of the trade association meeting that sets forth specifically what will occur when, and the matters to be discussed with sufficient clarity to assess appropriateness of the discussion in light of the audience.

DO inform the Legal Department of upcoming trade association meetings well in advance and with enough information to confirm the purposes of the meeting and who will attend, review the agenda, and assess whether ArcelorMittal legal counsel should attend as well.

DO strictly follow the agenda – its use as an accurate record of the purpose and subject matter of the meeting is undermined by discussion of off-agenda items.

DO ensure that minutes of the meeting are taken in draft form and thereafter reviewed before finalized.

DON'T discuss even the state of the market in which you participate with anyone at the meeting – follow that as a rule and you will substantially avoid any discussion of price, other terms of trade, customers, bids, or plans, or the appearance thereof.

DON'T engage in sidebar discussions at the trade association meeting or at anc illary social events or meals by yourself with one or more representatives of competing companies – there is strength in numbers so stay with other colleagues of ArcelorMittal where possible.

If the trade association prepares industry statistics, DON'T provide ArcelorMittal commercial data to the trade association (or agree to receive data) unless the statistical services offered have been vetted and approved by the Legal Department.

3. Planned Meetings with Competitors

From time to time there may be occasions where ArcelorMittal will meet with competitors for legitimate business reasons (e.g., joint ventures, supply agreements, etc) outside of the context of trade association meetings.

All of the policies and guidelines set forth above with respect to individual contacts with competitors and trade association meetings must be followed strictly with respect to any planned meetings with competitors.

The Legal Department MUST be involved in the preparation of, and attendance at, such a meeting unless the Legal Department determines otherwise.

4. Benchmarking

Benchmarking with competitors of ArcelorMittal is in principle NEVER permissible, except for benchmarking done through an outside consultant. Even in the latter case, strict rules apply.
You should contact the Legal Department before engaging in any benchmarking exercise.

5. Market Intelligence

You can obtain market intelligence only from sources other than our competitors, such as publications, including trade reports, etc. Even if those sources don't give you as much information as you may want or need, you should NEVER go to our competitors for it.

Equally, you should not encourage customers or suppliers to provide you with competitors' prices or information on their commercial policy. If a customer or supplier happens to provide you with such information, please report this to your management and please keep a written record of the source of such information and the circumstances in which it was provided to you.

DO obtain necessary market intelligence from public sources and NOT your competitor.

DO keep written record of the source of any such information and circumstances in which it was provided to you.

DON'T meet with, or in any way correspond with your competitor regarding market intelligence.

II. ARRANGEMENTS WITH CUSTOMERS AND SUPPLIERS

Although collusion between competitors constitutes the most obvious violation of the antitrust laws, certain other types of arrangements with customers or suppliers are also forbidden.

The following arrangements with customers or suppliers are likely to be unlawful:

- setting your customer's pricing policies (e.g., resale price maintenance, recommended prices which are enforced by sanctions);
- market partitioning by sales territories (e.g., export restrictions) or customers (excessive/long term exclusivity arrangements; sole supplier status etc);
- prohibition of passive sales outside a sales territory allocated to a trader or a reseller (parallel trade); or
- prohibition of selling competing products imposed on a trader or reseller except in certain circumstances.

Where a customer or a supplier proposes arrangements of this nature, you should immediately consult the Legal Department. ArcelorMittal should only propose such arrangements with the approval of the Legal Department.
Joint purchasing and/or joint selling arrangements can affect competition and should NEVER be entered without prior consultation of the Legal Department.

III. ABUSE OF MARKET POWER BY A DOMINANT COMPANY

A behavior that is perfectly legal for a seller that does not hold market power may be unlawful ("abusive") when engaged in by a seller that does.

Market power (or "dominance") may be found when companies have more than 40% market share in respect of a particular product and customers are unlikely to switch to another product as a result of a small but permanent price increase.

Abusive conduct may, in particular, consist of:

- Predatory Pricing
  A seller with market power in a particular product market is prohibited from undercutting, or pricing below costs, a competitor with the intent to harm that competitor and/or with the aim of removing competition on that particular product market in order to then increase prices to its customers and suppliers.
- Selection and Rejection of Customers or Suppliers
  A refusal to deal with a would-be or an existing customer or supplier may be unlawful if the refusing party has market power in respect of the product concerned.
- Price Discrimination and other Differential Treatment of Customers and Suppliers
  A seller that has market power must not discriminate in its prices or other sales conditions when dealing with similarly situated customers under comparable conditions. Only if there is an objective justification for the different conditions (e.g., rebate to a distributor providing special service), may different prices or terms be proposed to customers in the same class or category. Discriminatory discounts by a dominant company are generally not permitted.
- "Tie-Ins" and "Bundling" of Product Ranges
  A seller with market power in one of its product markets may NOT force its customers to make other purchases from it by "tying" its sales of the product where there is dominance with sales of other products. Severe antitrust penalties are applied to these types of violations. If you believe that ArcelorMittal has market power in relation to a certain product, or if you are dealing with a supplier which has market power you should consult with the Legal Department.

IV. ACCURACY IN WRITING

Be accurate in what you write in correspondence, emails and memoranda about the businesses in which ArcelorMittal competes, competition and competitors. It is easy for what we write to be taken out of context and provoke incorrect inferences about our commercial conduct and/or the markets in which we compete. Some simple guidelines can avoid many problems:

DO stay always clear, concise and complete and avoid hyperbole.

DO limit memoranda, e-mails or letters dealing with the subject of competition or competitive prices to statements of fact and always provide the source of the information.

DON'T ever overstate ArcelorMittal's market position and/or its market strategy.

DON'T ever write inter-office memoranda in a way that could support an inference that ArcelorMittal is engaging in predatory activity, that there is some sort of collusive understanding among competitors or that ArcelorMittal is otherwise acting with anticompetitive intent (e.g., such as references to driving out the competition).

Following these simple guidelines will reduce substantially the risk of unjustified inferences in the event ArcelorMittal later faces an antitrust enquiry.

V. GOVERNMENT INVESTIGATIONS

Officers and employees should inform the Legal Department immediately where there are allegations, be it from competitors, customers or any other source, that ArcelorMittal is involved in illegal behavior. It is ArcelorMittal's policy to cooperate in all appropriate ways with authorized governmental authorities in connection with any investigation conducted by them in the proper performance of their duties. A government investigation in this context means any non-routine enquiry by a European or national law enforcement agency related to corporate activities of ArcelorMittal or its subsidiaries regarding possible criminal or civil violations of any laws or regulations. Under EU and national procedural rules, the European Commission or national competition authorities may issue a request for information to ArcelorMittal at any location in the EU andrequire ArcelorMittal to furnish oral or written information. These authorities may also at any time conduct unannounced on-site inspections ("dawn raids") in any premises of ArcelorMittal and/or private cars or houses. It is important, therefore, that any non-routine government investigation, whether antitrust or otherwise, be coordinated within ArcelorMittal and handled in a prompt and orderly manner.

ArcelorMittal's Group General Counsel should be immediately informed when any employee is approached by any person or authority conducting a government investigation regarding possible violations of competition laws.

In order to ensure the required coordination, and the furnishing of accurate and complete information, as well as to safeguard the rights of ArcelorMittal and its employees, no information concerning ArcelorMittal's business, whether oral or written, should be furnished except after prior review, advice and approval of the Legal Department. The ArcelorMittal "Dawn Raid" Guidelines should be followed in case of on-site inspections conducted by EU and/or national competition authorities.

The destruction of ArcelorMittal records or files should always comply with ArcelorMittal's rules on the retention of documents and records. No ArcelorMittal record or file may be destroyed or altered during a government or internal investigation.

VI. CONSEQUENCES OF VIOLATION OF ANTITRUST LAWS

A violation of EU or national European antitrust law may result in significant penalties for ArcelorMittal and individuals alike, including in certain circumstances, prison terms for individuals.

EU and national European antitrust laws allow penalties up to 10% of the world-wide turnover of the corporate group. In addition, for certain types of violations, national laws of certain countries may lead to penalties and imprisonment for individuals.

Moreover, in addition to criminal and civil penalties, antitrust violations are also subject to private damage actions that allow private parties (e.g., customers) the right to recover very substantial amounts on account of damage caused to their business by unlawful conduct.

Criminal and/or civil fines, private damage recoveries, and, most importantly, damage to the reputation of a company in the marketplace, can severely impact a company's business. Contracts containing an illegal clause may be held unenforceable and invalid.

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