ANTITRUST

1. Introduction

1.1. AMCHAM Myanmar ("AMCHAM") is a membership organization compiled of companies with business connections to the United States operating in Myanmar.

1.2. Cooperation among competitors through associations on activities like those performed by AMCHAM are permitted and useful for many purposes but can give rise to complications under antitrust laws.

1.3. Each AMCHAM member is responsible for complying with antitrust rules and for ensuring that its employees respect and are aware of their obligations under such antitrust rules.

1.4. The Executive Director of AMCHAM may alert the Board of Governors in cases of possible antitrust infringement that may be committed by AMCHAM members when performing their duties as association volunteers.

1.5. These guidelines serve as a reminder for participants of AMCHAM meetings and for the Executive Director of AMCHAM. They contain only the most basic principles to be respected under antitrust law.

2. General Guidance on Antitrust Rules

2.1. AMCHAM and its members should be expected to follow internationally accepted antitrust rules. Essentially there are two prohibitions:

a. a prohibition on anti-competitive agreements, arrangements, and understandings between competitors; and

b. a prohibition on the abuse of strong or dominant market positions.

<u>Why Comply with Antitrust Rules?</u>

2.2. There are compelling reasons for complying with antitrust law as it has deep impact on the conduct of business. Authorities can penalize infringements and customers could sue to recover loss they have suffered as a result of such infringements. Infringing antitrust laws may mean that agreements made by members may not be as secure as they should be. Parties to such agreements might be able to annul agreements which contain provisions infringing antitrust laws.

2.3. In several jurisdictions, including Myanmar, breaches of antitrust law may lead to imprisonment or a personal fine for directors, managers and/or staff responsible for such breaches.

<u>Detection and Leniency</u>

Antitrust infringements rarely go unnoticed. Almost all antitrust authorities have introduced leniency programs. Under a leniency program, an undertaking that reports, at its own initiative, a breach of antitrust law in which it was involved itself, may be eligible for full or partial exemption from fines.

What is prohibited?

2.5. By bearing in mind the objectives of antitrust law, it is easier to understand what behavior is not acceptable. The objective is to ensure that purchasers have a range of independent competing sellers who have not acted together to reduce the degree to which they compete through artificial means. Likewise, a seller should be faced with competing buyers who are not coordinating their purchasing.

2.6. Where a business significantly dominates a market to the level that the business can operate without taking very much account of any impact on competitors and customers, it must be careful not to damage antitrust by reason of its dominance alone.

General Checklist

2.7. DO ensure that business decisions are made unilaterally in the undertaking's own interest based on information freely and properly available.

2.8. DO base decisions on your own experiences and information and general public knowledge.

2.9. DO ensure to keep accurate and dated memos on all contacts with competitors, including contacts within trade associations and their working groups. Otherwise, it may be difficult to refute allegations from customers, competitors, the media or authorities of cartel-type arrangements or other anti-competitive behavior. If a competitor should propose steps to be taken in violation of any provision of antitrust law, the proposal should be immediately rejected and internally reported.

2.10. DO ensure that neither internal nor external documentation can be misconstrued as evidence of cartel-type arrangements or other anti-competitive behavior.

2.11. DO ensure that legal advice on antitrust law from lawyers outside the undertaking remains protected by the so-called lawyer/client privilege and is marked 'PRIVILEGED & CONFIDENTIAL'. Most antitrust authorities cannot require access to such documents, which should therefore always be kept on separate files.

2.12. Whenever the above checklist or any specific matter give rise to queries under antitrust law, it is important to always notify and seek advice.

Agreements

2.13. Agreements and practices which restrict or distort competition are prohibited. Examples are:

a. competitors agreeing, or reaching an understanding on, common pricing structures, discounts, production volumes or other terms of supply. This would include an arrangement where competitors agree on the basis of which they will enter a competitive tender (bid-rigging);

b. competitors agreeing to share markets or customers, such as agreements not to compete in certain areas or in relation to certain products, not to bid for custom, or agreements not to poach one another’s customers;

c. exchanges of information between competitors, such as giving to or receiving from competitors advance notice of price increases or providing them with information on prices or terms of supply to individual customers or important elements of their cost base. This is so even if the recipient of the information has not actively solicited the information.

d. imposing or supporting minimum resale prices or minimum margins on purchasers, distributors or wholesalers. Purchasers should be free to set their own pricing policy and to compete on price at their level of trade. It is lawful to suggest a resale price but putting pressure on a customer with a view to ensuring that the customer sells at that price, or no lower than a certain price, is not permissible.

2.14. A formal agreement is not necessary for the rules to be breached. Verbal agreements are sufficient, as are informal understandings which do not involve “agreements” as such.

2.15. There can be an illegal arrangement even if, at a meeting or other contact with one or more competitors, only one of the participants discloses pricing or other commercially sensitive information. This is so even if the recipient of the information has not actively solicited it. The law assumes that even the companies which do not contribute any information will inevitably have their market behavior conditioned by the information they have obtained. The normal level of uncertainty about competitors’ behavior is reduced by the receipt of this information and that, of itself, can distort the market.

2.16. Therefore, if, for example, you receive a call from a contact in a competing business who offers such information you should politely terminate the call and internally report the matter. Likewise, if a competitor asks you to contribute such information, you should politely decline to do so and internally report the matter. The same principle would also apply if a third-party acts as a conduit for the sharing of sensitive commercial information between competitors.

General checklist agreements

2.17. DON'T discuss confidential commercial matters with competitors. This applies in particular to pricing, rebates and bonuses, price increases and the time or date of such increases, raw material prices and other supply terms.

2.18. DON'T exchange essential commercial information with competitors. This applies to the random as well as the systematic exchange of information on for example customers, market shares, prices and other supply terms.

2.19. DON'T make arrangements with competitors to allocate production or sales quotas, to divide markets by sharing customers or geographic areas or otherwise to achieve ‘order in the market place’.

2.20. DO ensure that all contacts with competitors, including discussions at trade associations, are properly documented and do not extend to such matters as prices, customer allocation, service level, forecasts, and terms of sale.

"Strong" market position

2.21. The general consensus internationally is that an undertaking is not ‘dominant’ when its market share is below 25 per cent, may be ‘dominant’ with a market share between 25 and 40 per cent and is presumed to be ‘dominant’ with a market share higher than 40 per cent. Abuse of a dominate position is prohibited.

2.22. Abuse of a dominant position may comprise:

a. manipulating supply and or demand of good

b. controlling the purchase or selling price directly or indirectly or controlling the fees of services;

c. restraining and controlling access to markets or resources, or the production, importation, distribution, and sale of goods

d. specifying compulsory terms and conditions directly or indirectly for other businesses for the purpose of controlling price;

General checklist strong market position

2.23. DON'T discriminate against distributors, customers or competitors in any market where the undertaking may be said to enjoy a dominant position.

2.24. DON'T impose tying in any market where the undertaking may be said to enjoy a dominant position. Provided that the undertaking is dominant within certain products or services, it is for example prohibited to link the sale of such products or services to the simultaneous sale of spare parts for the products or of other products or services.

2.25. DON'T sell products at predatory prices and be careful with price reductions in any market where the undertaking may be said to enjoy a dominant position. Although one of the objectives of antitrust law is to enhance price antitrust, it is prohibited for dominant undertakings to sell at prices below average variable costs (and sometimes even below average total costs if the assumed intention may be to drive competitors out of the market).

2.26. DON'T give rebates, discounts or bonuses conditional upon customer fidelity. Rebates, discounts or bonuses must be dependent on volume only and be paid or deducted on a regular basis.

Associations and other meetings with competitors

2.27. AMCHAM Myanmar (“AMCHAM”) and trade associations have a very useful role in promoting and defending a member’s interests. Although it is perfectly legitimate for any member to participate in AMCHAM activities, such activities could be used as a platform where competitors engage in agreements and practices contrary to antitrust rules. Such contacts with competitors (horizontal agreements) are often qualified as cartel contacts if it concerns:

a. essential commercial information sharing on prices, sales and market;
b. customer sharing;
c. limitation of production; and
d. boycotts.

2.28. Care must also be taken by those in contact with competitors as part of formal or informal trade association meetings and similar organizations or occasions where competitors meet. A legitimate meeting can, through no activity on your part, be turned into an illegal meeting. If at any such meetings there is an attempt to discuss prices or the terms on which competitors do business (including, for example, lead times or the timing or extent of price increases), you should immediately disassociate yourself from such discussions and, if necessary, leave the meeting and internally report the matter. This applies even if you did not actively solicit the information.

2.29. Trade associations often compile industry statistics. As a general rule, provided this is genuinely aggregated (such that it is not possible to identify individualized data) or sufficiently historic (to the effect that it is no longer competitively relevant), the provision by a member of data to an independent third party and the receipt of the statistics does not contravene antitrust law.

2.30. It is advised not to discuss the following information at AMCHAM or trade association meetings:

a. territorial restrictions, allocation of customers, restrictions on types of products, or any other kind of market division;

b. pricing or other terms given to customers;

c. individual undertaking prices, price changes, conditions of sale (including payment terms and periods of guarantee), price differentials, discounts;

d. bids on contracts for particular products and the procedures for replying to bid invitations;

e. general market conditions and general industry problems, including industry pricing policies or patterns, price levels or industry production; capacity, or inventories (including planned or anticipated changes regarding those matters), except to the extent necessary to achieve legitimate objectives of the Chamber or trade association;

f. individual undertaking figures on market shares, sources of supply, production;

g. any undertaking specific business plans, marketing initiatives or any other information as to future plans concerning technology, production, marketing and sales;

h. matters relating to individual suppliers, distributors or customers; and

i. any other confidential information.

3. Specific Guidelines for quality and control initiatives

3.1. AMCHAM and trade associations are allowed to develop initiatives relating to:

a. Agreements and cooperation between undertakings solely with the purpose of:

(i) joint market research;

(ii) the joint development of business comparisons and benchmarks;

(iii) the joint development of statistics and calculation schemes.

b. Agreements and cooperation between undertakings solely with the purpose of:

(i) cooperation in accounting;

(ii) a joint credit guarantee;

(iii) a shared debt collection agency;

(iv) a joint consultant on business or tax advice.

c. Agreements and cooperation between undertakings solely with the purpose of the joint execution of projects regarding research and development.

d. Agreements and cooperation between undertakings solely with the purpose of the common use of production, warehouse or transport facilities.

e. Agreements and cooperation between undertakings solely with the purpose of incorporating entities for the purpose of the joint execution of assignments if the participating undertakings are not competing with each other in respect of the assignment or are not able to execute the assignment independently.

f. Agreements and cooperation between undertakings solely with the purpose of joint marketing activities.

g. Agreements and cooperation between undertakings solely with the purpose of using a distinctive quality / control mark in order to distinct its product, provided that every competitor is able to use such mark under the same conditions.

3.2. When developing instruments such as the above, AMCHAM will take care that these initiatives will not result in

a. decisions or recommendations by AMCHAM on parameters that are competitively relevant;

b. collective boycotts; or

c. any other collective action or collusion that restricts competition.

4. Specific Guidelines for AMCHAM meetings

4.1. The following guidelines apply to all AMCHAM meetings, communications and other activities and should be observed and followed at all times.

4.2. Each AMCHAM member is responsible for complying with antitrust rules and for ensuring that their organization's employees respect and are aware of their obligations under such antitrust rules. These guidelines only contain the most basic principles to be respected under antitrust law and they serve as a reminder for participants of AMCHAM meetings. Meeting participants should be entirely familiar with these rules and should consult a competition lawyer in case any specific issue arises.

DOs:

a. make sure that you have an agenda before each meeting;

b. verify that minutes are taken and that they reflect properly what was discussed and agreed at the meeting;

c. raise your objections against any discussions or activities that appear to be in conflict with competition rules; distance yourself publicly and conspicuously from such discussions or activities and leave the meeting immediately if those discussions continue. Before leaving the meeting, ensure that your objections are recorded in the minutes. If necessary or if the minutes do not reflect your objection, follow with a note to all participants after the meeting.

DON'Ts:

Do not, formally or informally, in fact or in appearance, in meetings or during social gatherings incidental to meetings, exchange with participants information containing:

a. individual company prices, price changes, price structure, price differentials, mark-ups, discounts, allowances, credit terms, etc., or data that bear on price e.g. costs, production, capacity, inventories, sales, etc.;

b. industry pricing policies, price levels, price changes, differentials, etc.;

c. changes in industry production, capacity or inventories;

d. bids on contracts for particular products; procedures for responding to bid invitations;

e. plans of individual companies concerning the design, production, distribution or marketing of particular products, including proposed target territories or customers;

f. any potentially commercially sensitive data, present or future plans of individual companies concerning strategic business decisions on pricing, production, distribution, marketing etc.

g. any of the above categories of data in a format allowing for identification of individual companies

ANTITRUST STATEMENT

I certify that I read and understood the above policy concerning antitrust in AMCHAM Myanmar.

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Signature

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Printed Name & Date

Version	Approved	Next review	Reviewed	Principal Reviewers	Applies to
1.0	June 16, 2022	May 2025	October 2024	ED, Secretary	Members