Global Cement and Concrete Association

COMPETITION COMPLIANCE POLICY

GLOBAL CEMENT AND CONCRETE ASSOCIATION

1. Introduction

The GCCA believes in fair competition and in the competition laws that seek to protect it. Fair competition and the free-market economy are means of continuously improving economic efficiency and protecting economic advances from any restrictions put in place by the market players themselves. Fair competition allows the GCCA, its Members and Affiliates to provide the cement industry with the best products at most favourable conditions. The success of the cement industry goes hand-in-hand with adherence to competition law rules.

Trade associations can provide great benefits to the marketplace and to consumers. However, because they may involve groups of competitors working together on common industry issues, trade associations are subject to particular competition law scrutiny. Compliance with the law is part of the GCCA's corporate culture as set out in the Code of Business Conduct, which includes this Competition Policy (the "**Policy**", as amended from time to time). This Policy sets forth the basic competition law principles that GCCA Members, Affiliates and employees shall comply with when preparing, organising and attending meetings as well as in any other GCCA activities, and aims to prevent inadvertent competition law violations as well as expanding on issues outlined in **Sections 4** and **10** of the Code of Business Conduct.

This Policy is mandated by the GCCA Articles of Association and has been endorsed and adopted by the GCCA's CEO. Every GCCA Member, Affiliate and employee must explicitly and unconditionally accept it, in accordance with Article 46 of the GCCA Articles of Association.

This Policy applies to all GCCA Members, Affiliates and employees. The GCCA is fully committed to ensuring that all Members, Affiliates and employees adhere to this Policy at all times. All GCCA business partners and its Members and Affiliates, such as agents, distributors, franchisees, subcontractors or service providers, are also required to comply with this Policy and applicable competition laws in the performance of their contract with the GCCA and its Members and Affiliates.

The Policy provides only a minimum standard as regards to fair competition. Many countries have competition laws which may regulate competitive behaviour slightly differently. This Policy reflects global best practice standards. However, all applicable competition laws must be followed when doing business in any particular country. Where there is inconsistency between this Policy and local law, you should apply the stricter standard. In countries where no local competition law is in place, you should follow this Policy as a minimum. In case of doubt, consult the Compliance Officer or the relevant legal department.

2. Training

The Executive Team, CEO and staff of the GCCA will be given regular specific training on compliance with competition laws. All staff will be briefed on the specifics of these guidelines, their practical application and also on the wider nature of competition law principles. Certain positions, notably directors, front of house staff and legal advisors will require additional and more in-depth training. The GCCA employment contracts and appointment letters require GCCA staff to comply with competition law in general and these guidelines in particular.

Training will be updated on an annual basis for all staff members within the GCCA. Any member of staff joining the GCCA during the year shall be provided with initial training. The initial information and training is given when the employee is familiarised with their duties by their superior. It must be carried out extremely thoroughly. For follow-up training, internal or external face-to-face seminars shall be used, as well as internal meetings. The relevant superiors are responsible for ensuring that their employees take part in training of this kind at least once every year, or more often if required. The provision of suitable training is the responsibility of the CEO.

3. The Rules of Competition Law

Almost all countries have issued laws to protect free competition and have authorities that monitor and enforce compliance with these laws. The basic concepts of competition law are simple: (i) businesses/contractors must compete, not collude; (ii) they must not abuse any 'dominant position'; (iii) in certain cases, transactions may need to be pre-approved by competition authorities; and (iv) they must not exchange commercially sensitive information.

There are also a number of specific areas of competition law that trade associations in particular must pay attention to: membership rules; the industry-wide standards they may set; and information exchange at association meetings. These are discussed further in the next section.

3.1 General Features of Competition Law

One of the fundamental principles of competition law is that companies should individually determine their own behaviour. So, for example, decisions concerning prices, policies, profit margins, investment plans, and all commercially sensitive information must be taken independently and not in cooperation with actual or potential competitors. Since all trade associations assist their members to work together on legitimate issues of common interest - e.g. regulatory matters and the development of the relevant industry – the GCCA must always be clear on the boundaries competition law places on its activities.

This is clearly an area of significant legal risk which the GCCA and its Members and Affiliates have to manage. Trade associations are of special interest to competition authorities, rightfully so as by definition they arrange meetings of competitors (see **Section 4** below for further information regarding the conduct of meetings). Bona fide collaboration on legitimate industry issues is permitted; using any meetings, formal or informal, as a 'cover' for collusion in anti-competitive practices is prohibited (**Appendix 3** contains a short statement to be used as a "**Competition Law Reminder**" at the start of every meeting and call. **Appendix 4** also provides a non-exhaustive list of "**Dos and Don'ts**" in the trade association context).

Competition law is about substance, not form; but the written record (including any email or text/ voice messages in the GCCA's or its Members' or Affiliates' systems and their respective employees telephones, respectively) is critical if investigations take place. Information exchanged and activities discussed formally or informally, in emails or telephone calls or at informal social events can all provide evidence of a breach of competition law.

In general, competition laws prohibit restraints of competition regardless of where a restraint may have originated. Thus, violations can occur if your activities unlawfully affect a given country or region, even though the activity takes place elsewhere. Authorities in these countries often cooperate in investigating and penalizing anti-competitive conduct with an international dimension.

3.2 Collusion

Competition laws in most jurisdictions prohibit agreements between companies that have the object or effect of restraining competition. Collusive agreements may be formal or informal, written or oral, and signed or unsigned, and may be unlawful even if never actually implemented or "successful". Even informal co-operation between competitors that falls short of an actual agreement but amounts to an unspoken 'understanding' and which has the effect or object of restraining competition (so-called "**concerted practice**") is not permitted under this Policy and can be unlawful under applicable law. Restraints of competition can be divided into two types: 'horizontal' and 'vertical' restraints.

Horizontal restraints are agreements or concerted practices restricting competition between companies operating at the same level of the supply chain (e.g. two cement producers or two ready-mix concrete producers between each other). These can arise in particular in the following circumstances:

- fixing of prices or price components (reductions, discounts, costs, interest etc.) or significant terms of business (guarantees, payment terms, delivery terms etc.);
- fixing of price increases or output;
- the arranged distribution of markets by products, regions, customers or market shares;
- the arrangement of delivery quotas;
- arrangements regarding capacity utilisation and product ranges;
- fixing bids in tendering procedures; and
- the exchange or facilitation of the exchange of information regarding prices, market shares, customers, innovation, new products or other circumstances relevant to competition (see **Section 4** and **Appendix 5** below for further information).

Vertical restraints are agreements or concerted practices between companies operating at different market levels (e.g. a cement supplier and a distributor). These can arise in particular in the following circumstances:

- agreements about fixed or minimum prices for resale or other restrictions on resale;
- exclusivity agreements; and
- long-term supply agreements for the majority of the purchaser's requirements.

3.3 Abuse of Dominance

Dominance refers to a company having a market position that gives it the ability to dictate or otherwise enforce conditions and measures that, without the strong market position, would not be enforceable or would be difficult to enforce. Importantly for the GCCA, even if individual Members may not be dominant, trade association members may be considered collectively dominant in a particular product market if four or fewer of them account for a large share of supply.

Dominance as such is not prohibited by competition law, but the *abuse* of a dominant position is. Abusive market practices by dominant companies can be categorized as exclusionary practices (i.e. practices which seek to harm competitors or to exclude them from the market) and exploitative practices (i.e. practices which involve the dominant company using its dominant position to harm customers or suppliers directly). With relevance for associations, exclusionary practices can e.g. include the setting of unjustified technical standards in order to restrict access to a market.

3.4 Merger Control

Merger control is a specific regulatory procedure for investigating whether an acquisition or significant investment may bring about an economically undesirable restriction of competition, such as leading to a dominant market position being created or strengthened. Over 140 countries enforce merger control laws. Many countries require pre-approval of transactions triggering minimum turnover or value thresholds. Implementing a merger which has to be authorised before it has been authorised (so-called "**gun-jumping**") is unlawful and in such case usually subject to severe sanctions.

4. Conduct of Meetings

Meetings of competitors under the guidance of trade associations are not prevented by competition law. However, Members must not use the forum provided by trade associations in order to co-ordinate their activities, to influence the conduct of a competitor or to discuss commercially sensitive issues, directly or indirectly.

Every meeting of the GCCA must be convened with prior notice and should have a specific, demonstrable purpose set out in an agenda, in the form of the template attached in **Appendix 1**, which shall be circulated to all Members before the meeting so that they have sufficient time to raise any concerns ahead of the meeting. The Competition Law Reminder for GCCA Meetings (the "**Reminder**") attached at **Appendix 3** shall be the first item (unless a chairperson must be appointed first). The agenda should avoid open-ended items such as 'Miscellaneous', and the specific content of the agenda shall be reviewed or written by the GCCA's CEO.

As soon as a meeting has been convened, the chairperson shall read the Reminder out loud, including if applicable the specific reminder for new participants, and the minutes shall so record. The chairperson of the meeting must stop any discussion that he/she deems might lead to an infringement of competition law and seek the advice of the Compliance Officer or external competition counsel. Each meeting shall be recorded accurately by minutes, in the form of the template attached at **Appendix 2**, and these shall be circulated to all Members after each meeting. Minutes of each meeting shall be reviewed by the Compliance Officer prior to circulation, and must be retained permanently by the GCCA for its records.

The CEO or a competent person nominated by the CEO shall be present during all meetings to monitor compliance with applicable competition laws. If the specific agenda of the GCCA meeting in question makes it advisable, a competition law specialist may be invited to attend in order to ensure compliance with competition laws. All participants attending the meetings are required to be fully familiar with this Policy.

Any Member that does not comply with any competition law provision and, in particular, with any of the principles set forth in this Policy may be asked by any other Member(s) to leave the meeting as soon as any potential infringement occurs. Any such Member or representative may be temporarily or definitively excluded from participating in the meetings and the GCCA itself.

5. Prohibited or Sensitive Subjects

GCCA Members and Affiliates should never discuss or exchange information on commercially sensitive subjects. "**Commercially sensitive information**" is defined as company-specific information, which, if exchanged, could influence actual or potential competitors' future conduct. It refers to, but is not limited to the following prohibited subjects:

- individual company or industry current or future prices, including any matters affecting price such as discounts, rebates, surcharges, price changes, price differentials, profit margins, price mark- ups, credit or other terms of sale;
- individual company costs, including any cost components such as production or distribution costs, cost accounting formulas, methods of computing costs;
- individual company sales or production related information, including market shares, sales volumes, sales revenues, production volumes, output, production capacity, capacity utilisation, stock levels or supplies;
- individual company confidential future plans, including future plans relating to sales and marketing strategy, production, technology or innovation, purchasing or bidding plans or other commercial strategies;
- individual dealings with customers or suppliers or purchasing associations including the status or content of yearly negotiations;
- proposals for joint market conduct regarding specific companies, including customers, suppliers and other industry participants, including boycotts and blacklists; and/or
- matters relating to proprietary technical development.

Conduct at social events in conjunction with GCCA meetings, when representing the GCCA at industry events or otherwise should follow the same standards as regular meetings. Communications between Members and Affiliates using GCCA fora like the LinkedIn Group, Facebook or Twitter are also subjected to these guidelines. For the avoidance of doubt, GCCA meetings should never be used to:

- issue formal or informal pricing or output recommendations to other Members, Affiliates or otherwise;
- adopt rules that restrict Members' or Affiliates' advertising and promotional business practices, beyond ensuring that such practices are legal, truthful and not misleading; and/or
- prevent Members and Affiliates from using different contractual conditions from any association developed standard conditions, if they wish to do so.

For further guidance on the competition law risk involved in the exchange of commercially sensitive information, and how to mitigate these risks, please refer to the table of 'Commercially Sensitive Information and Competition Law Risk' at **Appendix 5**.

6. GCCA Committees and Working Groups

Committees and working groups, projects and all other focus groups set up within the GCCA remain fully subject to competition law. Therefore, such groups are required to follow this Policy in the conduct of their meetings and related activities. All working groups, pilots and projects are to additionally be approved by the GCCA Compliance Officer before they are started. No results may be circulated to Members or Affiliates until reviewed and approved by the GCCA Compliance Officer.

7. Specific Rules Relating to Information Gathering by the GCCA

In light of constantly developing competition law rules and their application in Europe, this Policy also includes certain specific rules relating to information gathering and exchange by cement companies and associations. The GCCA has adopted these rules taking into account a long lasting investigation by the European Commission of the grey cement markets in certain European countries, as well as a separate investigation by UK competition authorities concerning the supply or acquisition of aggregates, cement and ready-mix concrete in Great Britain. The specific rules are set out at **Appendix 6**.

8. Membership Rules

To comply with competition law a trade association's membership rules must not disadvantage or exclude certain competitors and the GCCA must not use access to its membership in order to reserve unfair competitive advantage to its Members or Affiliates. Accordingly:

- no one should be pressured to participate in the GCCA or penalized for not doing so;
- membership of the GCCA shall be open to all producers of Portland cement clinker and other natural cementitious clinkers for the manufacture of cement; and
- GCCA Members and Affiliates shall not be restricted in any respect in the ways they decide to conduct their businesses. All actions of Members and Affiliates remain voluntary. Each individual Member and Affiliate remains free to make independent, competitive business decisions.

9. Industry Standards

Membership of the GCCA necessitates acceptance of its rules. Those rules must not directly or indirectly induce anti-competitive behaviour. The GCCA and/or its working groups may also develop and promote further industry standards, codes of practice or standard terms and conditions for agreements. These standards are allowed where they improve the quality of the GCCA's Members' or Affiliates' products or services. However, they must not be used to restrict competition. Accordingly:

- standardisation measures should not be used to raise artificial barriers to entry to the market;
- certification schemes must be available to all industry participants meeting the standards; and
- the use of standard terms must not be made compulsory and should not cover terms which are likely to be relevant to a customer in choosing between competing suppliers.

10. Responsibility for Monitoring Competition Law Compliance

Responsibility for observing the regulations of competition law lies with every employee who encounters issues relevant to competition law, which particularly applies to employees in more senior roles. Every employee is obliged to acquire the necessary knowledge to suitably assess such issues. Overall responsibility within the GCCA for monitoring compliance with competition law lies with the Compliance Officer.

11. Dawn Raids

Where a competition authority suspects a violation of competition law it may carry out a dawn raid on business or personal premises in order to gather evidence. Competition authorities generally have wide powers of investigation, including powers to seize documents and computer hardware, to question employees, and to seal off parts of premises. However, these powers are limited to the scope of the relevant authorization for conducting the dawn raid. GCCA Members, Affiliates and employees should therefore fully co-operate with a competition authority's investigation, but only within the boundaries of what the authority is permitted to investigate. Generally documents containing or referencing communications between the GCCA or GCCA Members or Affiliates and their legal counsel are protected by legal professional privilege, shall be segregated and clearly labelled as such, and authorities are not allowed to access them.

12. Leniency/Amnesty Programs

Many jurisdictions have implemented leniency or immunity programmes that offer either full immunity or a significant reduction in the penalties that would otherwise be imposed for participation in anti-competitive behaviour, in exchange for full cooperation with the authorities. Companies are increasingly making use of leniency and immunity programmes in order to avoid impending cartel penalties. As a result, the probability of cartel law violations being discovered has risen significantly for all participants.

Should any GCCA Members, Affiliates and employees have any doubts or questions in this regard, they should contact the Compliance Officer immediately, and may request training on specific topics (see **Section 2** above).

13. Consequences of Violating Competition Law

Competition law violations do not 'pay off'. The risk of heavy fines and damages claims, as well as the risk of criminal penalties extending to imprisonment for those personally responsible, outweighs any perceived benefit. Liability under competition laws may be strict – a trade association member may be liable for infringement by the rest of the association. Under EU competition law, a fine imposed on a trade association may be collected from any of its members unless the member can prove it was not involved in the trade association's violation (effectively reversing the burden of proof).

Even the mere allegation of a breach of competition law can cause severe reputational damage. Investigations and legal proceedings resulting from violations or suspected violations will attract adverse media coverage and result in serious reputational damage, can take years to resolve, run up significant expenses and take up management time to the detriment of the business. Contractual clauses which are in breach of competition laws are likely to be found 'null and void', and may lead to the invalidity of the entire contract.

14. Suspected Breach

Measures to ensure compliance with competition law must be properly documented. This helps to ensure the verifiability of the implementation of this Policy, absolves the GCCA and its staff in the event of investigations into possible competition law violations and may in some cases reduce a financial penalty. The information and training measures in particular must be documented. If necessary, sensitive data must be documented in such a way that they are subject to legal privilege.

GCCA Members, Affiliates and employees who encounter competition law violations in their working environment are expected to inform the Compliance Officer of this immediately.

15. Sanctions for Breach of Competition Laws

Non-compliance with this Policy and applicable competition laws is a serious offence and employees, directors and officers may be subject to disciplinary sanctions including termination of their employment. Breach by a Member or Affiliate may be grounds for expulsion from the GCCA.