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## **Antitrust standards and guidance notes**

# Rio Tinto

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## 1 Policy and introduction

Rio Tinto's antitrust policy is established by *The way we work*:

*"Rio Tinto is committed to the principles of free and fair competition. It is our policy to compete vigorously and effectively while always complying with the applicable competition/antitrust laws and regulations in all countries in which we operate."*

Rio Tinto makes decisions about its commercial strategy independently.

Improper contact with competitors may result in allegations of anticompetitive behaviour, exposing the Rio Tinto Group and its employees to the risk of severe penalties and damage to reputation. Keep in mind that if you take an action in one country that has an effect on trade or commerce in another country, you must comply with the antitrust laws of both countries.

### 1.1 Standards and guidance notes

These *Antitrust standards and guidance notes* implement Rio Tinto's antitrust policy. The standards are mandatory, while the guidance notes are not. The guidance notes assist in understanding and implementing the mandatory standards.

Defined terms are set out in section 2.

### 1.2 Application

All businesses and functions in which Rio Tinto plc or Rio Tinto Limited holds more than 50 per cent interest directly or indirectly must comply with these standards. Businesses in which Rio Tinto holds a minority interest should be aware of these standards and be requested to adopt substantially similar standards.

All employees and directors in the Rio Tinto Group must comply with these standards. Failure to comply may result in disciplinary action up to and including termination.

If there is a conflict between these standards and local laws, a business unit should comply with the one that is more stringent in the particular context.

### 1.3 Questions and additional information

These standards and guidance notes cannot cover all possible commercial and factual scenarios. If you have any questions or are in any doubt as to whether conduct would fall within the scope of these standards or comply with applicable laws or be anticompetitive in any way, you should speak to your manager and/or contact Legal – either your business unit lawyer or a hub lawyer. Specific antitrust lawyers are listed on the antitrust page of the Compliance community on the *Prospect* portal.

In certain countries, written communications with in-house lawyers may not be protected by legal privilege and are liable to discovery in an investigation. Seek advice first by telephone.

### 1.4 Management

Compliance and Legal are the custodians of these standards. Compliance and Legal will formally review these standards, guidance notes and associated training at least once every two years.

### 1.5 Links

The Rio Tinto documents referred to in these standards may be located through the links to Group policies and standards, Antitrust and Business integrity in the Compliance community at <http://prospect.riotinto.org>.

## 2 Definitions

**In these Antitrust standards and guidance notes:**

**Antitrust laws** are laws prohibiting anticompetitive practices among businesses; they are also referred to as “competition laws” and “trade practices laws”.

**Business units** includes all product groups, business units, global functions and corporate offices in the Rio Tinto Group.

**Commercially sensitive information** means any information which is not publicly known, including information which is shortly to be made public, relating to:

- sales,
- prices (including list prices, any elements of prices, discounts, rebates, future prices or an intention to change prices),
- contract negotiations,
- capacity,
- production,
- costs,
- supply information,
- profit levels,
- trade terms,
- credit terms,
- wage rates,

- commercial strategies or plans,
- exploration,
- processing or mining plans and strategies,
- intentions to bid or not to bid, and
- current and prospective market share and customers.

**Competitor** means a company which offers (or could reasonably be expected in the future to offer) the same or similar products or services to those offered by Rio Tinto.

NOTE: This may include a joint venture in which Rio Tinto has an interest but does not control output or marketing decisions. Suppliers, traders, customers and agents may be **competitors** in certain circumstances. In the context of procurement, a company which seeks to procure the same or similar goods or services as the **Rio Tinto Group** for its processes (particularly in regard to critical or major inputs or in discrete geographic areas) may be a **competitor**. If there is any doubt as to the status of an entity, seek guidance from Legal.

**Enforcement exposure employees** include employees, such as receptionists, security personnel, administrative assistants to **high exposure employees**, and internal lawyers, who may be required to interact with

enforcement authorities (such as antitrust authorities and corporate regulators) on unexpected visits to Rio Tinto sites and offices.

**High exposure employees** include all employees who are likely to confront significant antitrust issues in their work. Such employees would include those involved in marketing decisions, business analysis, procurement decisions and buying and selling of businesses or significant assets, legal advisers, investor relations, and representatives on management committees or boards of joint ventures that involve **competitors**. It also includes all employees in Band C and above.

**Moderate exposure employees** include all employees who are likely to confront antitrust issues in the course of attending industry meetings, technical conferences or trade shows, or when participating in benchmarking exercises or site visits or other similar interactions with **competitors**. It also includes all employees in Bands D and E.

**Rio Tinto Group** means Rio Tinto plc, Rio Tinto Limited and any business in which either Rio Tinto plc or Rio Tinto Limited has a direct or indirect interest greater than 50 per cent.

NOTE: In some instances, Legal may determine that, because of particular characteristics of a business:

- the business is considered **not** to be part of the **Rio Tinto Group** for the purposes of these standards even though Rio Tinto holds more than 50 per cent; or
- the business is considered to be part of the **Rio Tinto Group** for the purposes of these standards even though Rio Tinto holds 50 per cent or less.

In making such determinations, Legal will look at factors such as control of production, costs and marketing decisions. Please refer to the antitrust page on the Compliance community on the *Prospect* portal to see if there have been any public determinations.

## 3 Antitrust standards

### 3.1 Information sharing

You must not - directly or indirectly - disclose to, seek from or exchange with competitors any commercially sensitive information, unless the exchange has been specifically approved by Legal.

Price fixing, group boycotts and market allocation are serious illegal activities. Under no circumstances may you discuss or agree prices, discounts, trade terms, customers or markets with our competitors.

Disclosing commercially sensitive information to competitors can be illegal whether the disclosure is direct or indirect. Therefore, do not:

- use a trade publication or a journalist as an indirect means of passing commercially sensitive information to competitors;
- make any public pronouncement on future prices before contacting Legal for advice; or
- discuss with competitors any bids for sales or purchases, whether planned or made, or Rio Tinto's intentions in relation to any such bids.

Please note:

- Standard 3.3 and guidance note 4.3 regarding information sharing in the context of joint ventures.
- Guidance note 4.1 regarding confidentiality obligations in general.

### 3.2 Contact with competitors

You must not have intentional business contact with a competitor, unless:

- the contact has been approved by your manager and Legal, and
- you have within the last 12 months successfully completed either Rio Tinto's instructor led training or Rio Tinto's online antitrust training module.

Please note:

- Attendance at industry meetings is covered in standard 3.4.
- For approval of a course of planned contacts, please refer to guidance note 4.2.
- For unplanned, incidental or non-business contacts with competitors, please refer to guidance notes 4.2.
- For transactions with competitors, please refer to guidance note 4.7.

### 3.3 Joint ventures with competitors

Joint ventures with competitors must be approved in advance by Legal.

Rio Tinto Group employees who participate in the management of joint ventures with competitors must not discuss Rio Tinto Group commercially sensitive information that is unrelated to the joint venture. They may discuss commercially sensitive information directly related to the joint venture.

You must not attend joint venture management committee, board or shareholder meetings with representatives of competitors unless there is an agenda agreed before the meeting and you must ensure that only appropriate people attend. You must also limit meeting discussions to the agenda items and record meeting minutes.

Any Rio Tinto attendees at such meetings must have first completed the training set out in standard 3.2 "Contact with competitors".

### 3.4 Industry meetings

You must not attend meetings of industry groups, associations and institutions unless:

- your attendance has been approved by your manager, and
- you have within the last 24 months successfully completed either Rio Tinto's instructor led training or Rio Tinto's online antitrust training module.

### 3.5 Benchmarking

All benchmarking exercises involving competitors must be approved by your manager and be conducted according to a written benchmarking plan drafted for the specific exercise. The plan must document the nature of information to be exchanged, the purpose, the anticipated efficiency gains and the process to be followed. The plan must be approved in advance by Legal.

Benchmarking exercises must be limited to technical aspects of our business, unless approved by Legal.

### 3 Antitrust standards continued

#### 3.6 Vertical arrangements and dominant market positions

Vertical arrangements refer to arrangements between entities at different levels in the supply chain, eg between a supplier and a customer. Often, these enhance the efficiency in a market; nevertheless, a business unit must consider all arrangements between it and its suppliers, product distributors or customers. If it considers that there is any possibility that a proposed arrangement may be viewed as:

- lessening competition, or
- excluding other parties in either an upstream or downstream market,

The arrangement must be approved in advance by Legal.

Similarly, a business unit must consider if any proposed arrangement could be viewed as an abuse by Rio Tinto of a dominant market power and, if there is such a possibility, the proposed arrangement must be approved in advance by Legal.

Please refer to guidance note 4.8 for examples and commentary on this area, as it is often difficult to determine when such arrangements would breach antitrust laws.

#### 3.7 Implementation

Each business unit must:

- on the basis of a risk analysis, determine which of its employees are in high and moderate exposure roles and ensure that an up to date list of its employees in high and moderate exposure roles and in enforcement exposure roles is maintained and provided to Compliance through the process described on the antitrust page of the Compliance community on the *Prospect* portal;
- within **30 days** of their hiring or promotion to such position, ensure those employees in high and moderate exposure roles:
  - are provided with a hard or electronic copy of these *Antitrust standards and guidance notes*; and
  - successfully complete Rio Tinto's online training module covering these *Antitrust standards and guidance notes*;
- ensure that high and moderate exposure employees successfully complete Rio Tinto's online module covering these *Antitrust standards and guidance notes*

once every two years. In the alternate year, high exposure employees must receive instructor led antitrust compliance training as arranged by Legal and Compliance;

- ensure that enforcement exposure employees, within **seven days** of their hiring or promotion to such position, receive a hard or electronic copy of the Rio Tinto *Dawn raid guidelines* and successfully complete Rio Tinto's online dawn raid training module (the guidelines and the training module are available on the business integrity page of the Compliance community on the *Prospect* portal); and
- keep employee training records for seven years and provide Compliance with copies of such records through the process described on the antitrust page of Compliance community on the *Prospect* portal.

#### 3.8 Reporting violations

Employees must report to Legal or to their management any suspicion or allegation of any antitrust violation or breach of these *Antitrust standards and guidance notes*. Remember that such reports should first be verbal. (If you feel you cannot discuss such matters with your manager or with Legal, you can contact *Speak-OUT*.)

Where such reports of suspicions and allegations are received, the managers and Legal should immediately advise the most senior executive within a business unit and the global head of Compliance, who will thereupon consider whether to commence an investigation as outlined in the *Standard for investigations into allegations of serious wrongdoing*.

## 4 Guidance notes

### 4.1 Information sharing

- In the event that a competitor volunteers commercially sensitive information, you should point out that Rio Tinto's policy is never to discuss these matters with competitors and end the conversation. You should advise your manager and Legal immediately of the conversation.
- When making commercial decisions or compiling or updating market intelligence, you may consider information gathered from reputable public sources or third parties that are not competitors (for example, trade publications and industry analysts). You should document the source of any information received, particularly when it comes from third parties such as customers. Caution needs to be exercised when the customer is also a competitor.
- In regard to exchange of any information, you should keep in mind any confidentiality obligations.

### 4.2 Contact with competitors

- Contact with competitors should be kept to a minimum. There may be legitimate business reasons to have contact with a competitor such as to discuss the introduction of a new industry wide law or regulation, to negotiate the acquisition or sale of businesses or assets, or to manage joint ventures. In these instances, keep in mind the terms of these standards and guidance notes and in particular those relating to information sharing.
- The requirement that contact with competitors be pre-approved by your manager and Legal may, where appropriate, be addressed by your manager and Legal approving a course of planned contacts without having to be consulted in respect of each particular contact.
- In business meetings with competitors a written agenda should be agreed and exchanged among attendees in advance. Attendance should be limited to the necessary personnel. The topics discussed at such a meeting should

be documented through participant notes or minutes circulated to the other participants. In the case of joint venture meetings, formal minutes should be circulated to, and agreed with, all the attendees.

- As a general rule, meetings with competitors should, as much as possible, be limited to:
  - formal meetings (such as shareholder and board meetings) with respect to joint venture interests; and
  - participation in formal trade association meetings in accordance with guidance note 4.4 on industry meetings below.
- Social gatherings and other non business meetings with or involving competitors should be kept to a minimum. These *Antitrust standards and guidance notes* apply with equal force outside the context of formal meetings. For example, where there is a pre-existing personal/ social relationship between you and the employee of a competitor, you should be aware that casual or social conversations

entail risks of disclosing commercially sensitive information.

- Of course, it is not wise to discuss commercially sensitive information with a colleague in a public place.
- In the event of unplanned contact with competitors, for example at an airport lounge or hotel lobby or whilst participating at industry conferences, tension exists between:
  - not wishing to cause offence; and
  - the fact that competition authorities may well infer that the occasion was used to exchange commercially sensitive information.

You should immediately advise your manager and Legal of the conversation if it raises, or could be construed as raising, any significant issues regarding the topics covered by these standards and guidance notes. Likewise, if you inadvertently overhear a competitor discussing commercially sensitive information or are inadvertently exposed to such information, you should immediately advise your manager and Legal.

## 4 Guidance notes continued

### 4.3 Joint ventures

- Rio Tinto is involved in joint ventures, sometimes with competitors. Be aware that joint ventures between actual or potential competitors always raise antitrust sensitivities. You should strictly adhere to these standards in relation to those ventures.
- Rio Tinto employees who participate in the management of joint ventures with competitors may discuss commercially sensitive information directly related to the joint venture. For example, the Rio Tinto employee may discuss employee wages, profit levels or supply costs for the joint venture, but must not discuss employee wages, profit levels or supply costs at other Rio Tinto operations.
- Similarly, Rio Tinto employees seconded to a joint venture outside the Rio Tinto Group should not disclose commercially sensitive information about the joint venture to other Rio Tinto employees unless they are assigned to or involved with the joint venture. Rio Tinto's own commercially sensitive information should not flow to such seconded employees.
- In the case of joint ventures with actual or potential competitors where there are representatives from those competitors working in, or seconded to, the joint venture, particular care should be taken in relation to the flow of Rio Tinto's commercially sensitive information to the joint venture and particular recipients in the joint venture.
- Any joint venture benchmarking exercises should be dealt with in accordance with standard 3.5 and guidance note 4.5 below on benchmarking.
- Keep in mind that these standards and guidance notes apply to all social and informal gatherings associated with joint venture meetings.

### 4.4 Industry meetings

- Antitrust regulators show particular vigilance towards trade association meetings because these have in the past been a common place for anti-competitive conduct.
- Do not communicate commercially sensitive information at meetings of industry groups, associations and institutions.
- Take the following precautions to minimise the risk of participation in trade association meetings:
  - verify that the trade association's antitrust compliance guidelines are in place, adequate and complied with.
  - ensure that there is a formal agenda which has been reviewed and approved by an antitrust lawyer (either the association's own lawyer or Legal) prior to the meeting.
  - ensure that the trade association keeps accurate meeting minutes.
- Encourage the trade association to appoint its own antitrust lawyer to review and approve the agenda before each meeting and to attend each meeting to ensure antitrust compliance. Limit discussions to the points set out in the agenda.
- If a trade association meeting strays into a discussion of commercially sensitive information, interrupt to point out that Rio Tinto's policy is never to discuss such matters with competitors or be present where others engage in such discussions, and end the conversation. If the discussion persists, immediately withdraw from the meeting and have your objection and departure minuted. If you cannot have your objection noted in the minutes, make a "noisy" departure so that it is observed by other attendees. Report the incident to your manager and to Legal.
- In providing information to a trade association, limit the information on annual sales or average prices provided to historical data (generally data which is at least 12 months old). This information should be collated and aggregated by a third party under a written, confidentiality agreement and should only be distributed to participants on an aggregated industry wide basis so that individual companies' sales and prices cannot be identified. Refer any practice not fully in line with this to Legal.
- Keep in mind that these standards and guidance notes apply to all social and informal gatherings associated with trade association meetings.
- For particularly sensitive industry meetings, business units may wish their representative to take the online trade associations training module available through the Compliance Training Centre before the meeting.

## 4 Guidance notes continued

### 4.5 Benchmarking

- Benchmarking exercises carried out between competitors to evaluate best practices can raise antitrust issues. There are no constraints on carrying out benchmarking exercises against companies which are not competitors of Rio Tinto.
- The level of detail in a benchmarking plan should be commensurate with its level of antitrust risk. The benchmarking work plan should describe the exercise's purpose, the anticipated efficiency gains, and the process to be followed. A list of possible issues to be addressed in a benchmarking plan is available on the antitrust page of the Compliance community on the *Prospect* portal.
- Make sure technical data disclosed through benchmarking does not give competitors the ability to ascertain information about Rio Tinto operating costs or other commercially sensitive information. Raw data should be aggregated and rendered anonymous by an independent third party prior to distribution so individual assets or entities cannot be identified.
- An independent third party (eg a trade association or consultant) should collect, collate and disseminate the data. Information should only flow to and from the independent third party and should not flow between the participants.
- Generally, at least five reporting companies are required for each category of information collected and the figures for any one company should not be more than 25 per cent of the total to maintain confidentiality.
- The companies participating in the benchmarking exercise and the independent third party should have a written agreement for implementing these procedures.
- All documents and correspondence created in connection with any benchmarking exercise should be accurate and complete. Avoid provocative or loose language.
- Frequent benchmarking exercises by one business group or between the same groups of participants are discouraged and rarely permitted.
- Benchmarking should be open and voluntary. There should be no compulsory inclusion or exclusion of industry members.
- Make independent use of benchmarking information. Never use benchmarking as an opportunity for competitors to agree on a uniform set of "best practices".
- Do not exchange recommendations with other benchmarking participants other than through an independent third party.

### 4.6 Site visits

- Site visits by or to competitors run the risk of violating antitrust laws. They should be kept to a minimum and limited to health, safety, environmental and similar operational initiatives.
- Site visits should not result in disclosing or obtaining commercially sensitive information. Agree upon a written agenda before a site visit.
- If competitor personnel discuss commercially sensitive information or ask questions about commercially sensitive information, bring the conversation to an end and report the incident to your manager and to Legal.
- Follow the *Site visit guidelines* (available on the antitrust page of the Compliance community on the *Prospect* portal) and speak to Legal before site visits if you have any questions regarding whether a topic may raise antitrust law issues or whether information may be commercially sensitive.

### 4.7 Transactions with competitors

- Transactions with competitors present antitrust risks. Consider how the transaction would appear to regulators.
- We may undertake transactions with competitors for legitimate, commercial reasons if they are permissible under the antitrust laws. Transactions, or due diligence, should never be undertaken with competitors as a means to obtain commercially sensitive information. Information exchanged with the competitor must relate to the particular transaction.
- You should always discuss transactions with competitors with your manager and with Legal, and get their respective approvals before approaching, or responding to, a competitor regarding a potential transaction.

## 4 Guidance notes continued

### 4.8 Vertical arrangements and dominant market positions

- It is neither illegal nor bad for a company to have market power (dominance). A company with market power can compete vigorously provided it does not try to exclude its rivals or to exploit its customers. Determining whether a company has a dominant market position requires a full legal analysis in consultation with Legal. Competition laws generally prohibit predatory or exclusionary conduct intended to obtain or preserve a dominant market position.
- Vertical restraints between suppliers and customers may be illegal if they substantially lessen competition. Examples could include:
  - arrangements which restrict the further sales of product by the distributor or customer through resale price maintenance, territory restrictions, or customer allocations;
  - conditioning a sale on a party not doing business with a particular third party (boycotts) or on a party purchasing another unwanted product (tying); or
  - arrangements which restrict a supplier from supplying other parties.

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