

# Competition Charter



September 2020

Acknowledgement of reading



\_\_\_\_\_ (Parties), represented by  
Ms/Mr \_\_\_\_\_ have read and understand this Competition Charter regulating  
exchanges between Members and the processing of Confidential Sensitive Information and agree to be  
bound by its terms.

The obligation of confidentiality shall survive for a period of five (5) years following the end of the  
relationship with the Association and applies to any Confidential Sensitive Information.

Agreed and accepted on \_\_\_\_\_  
Name \_\_\_\_\_  
Signature \_\_\_\_\_

**Or**

I, Ms/Mr \_\_\_\_\_ (RMI's Workforce / Advisory board),  
have read and understand this Competition Charter regulating exchanges between Members and the  
processing of Confidential Sensitive Information and agree to be bound by its terms.

The obligation of confidentiality shall survive for a period of five (5) years following the end of the  
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Signature \_\_\_\_\_

## **PREAMBLE**

Several industries are currently using mica in their production chain. Due to a lack of control and traceability, mica from unknown origin – potentially collected by children or in unacceptable working conditions – can infiltrate the supply chain.

Responsible Mica Initiative (hereafter “**RMI**” or the “**Association**”) is an association whose aim is to improve the control and traceability of the mica extracted and ensure decent working conditions for the workers involved in its extraction and avoid child labor (hereafter “**RMI’s Activity**”).

For this purpose, RMI is grouping together all the levels of the industries involved in the mica value chain from the local stakeholders to the end-user industries such as NGOs and associations (hereafter the “**Members**”).

In the course of RMI’s Activity, Members will meet and work together in order to achieve their goal and secure the mica supply chain.

Nevertheless, if Members belong to the same industry, they may be competitors on certain markets or they may be business partners. Therefore, the governance and functioning of RMI shall be structured in order to ensure full compliance with the applicable rules of competition law.

Indeed, failing to comply with applicable competition laws and regulations can result in serious consequences for RMI and its Members.

Moreover, considering the purpose of the Association, non-compliant behavior by the Association or any of its Members may seriously impact the image of the Association and impede the completion of its goals.

Therefore, this competition charter (hereafter the “**Competition Charter**”) has been drawn up in order to set out the main principles of competition regulations and to lower the exposure of RMI and its Members to violations by providing instructions and guidance.

### **1. Competition law regulations**

The rules of competition law are designed to protect the market i.e. businesses and consumers from anti-competitive behavior. The law stimulates effective competition in order to deliver open, dynamic markets and enhanced productivity, innovation and value for customers.

All companies (not only companies with a significant market share in a specific market) must comply with competition law in their relationship with each other, as well as with business partners and customers.

The application of competition law is territorial and the rules that apply will depend on the territory where the anti-competitive practice has a negative effect. Nevertheless, the competition principles that apply around the world are quite similar.

#### **1.1 Forbidden practices under competition law**

Companies may be tempted to collude on future commercial decisions regarding prices or quantities.

Collusion between two or more companies whether “horizontal”, between competitors operating at the same level of the distribution chain (e.g.: the fixing of prices or quantities; the sharing of a market, etc.)

or “vertical” between parties operating at different levels of the distribution chain” (e.g.: conditions under which companies purchase, sell or resell goods or services, etc.) is strictly prohibited.

All forms of agreement (written, oral, etc.) which have an anticompetitive object or effect are not only prohibited but also void.

Even if they do not lead to direct collusion, exchanges of commercially sensitive information are forbidden, as they would change the companies’ behavior on the market and disrupt the normal course of competition.

Competition authorities make a distinction between:

- “restriction by object”: the most harmful practices that would have a negative impact on competition by nature, such as agreements on prices or the division of a market. In that case the competition authorities do not have to show any actual restrictive effect on competition and the practice will be considered anticompetitive by nature; and
- “restriction by effect”: practices that do not aim initially at restricting competition but may nevertheless have restrictive effects on competition. In that case a negative impact on the market must be proven.

If a negative effect is observed on the market, any document or event can be considered as proof that an anticompetitive agreement, even a tacit agreement, between two or more competitors exists and is causing this negative effect.

### 1.1.1 Exchange of information via RMI

The running of RMI implies that Members work together and may exchange information for the completion of the Association’s goal.

However, all kinds of information cannot be communicated: the exchange of sensitive information must not have the object and/or the effect of reducing/restricting competition on the market. Healthy competition implies that each party maintains a certain level of secrecy.

In general, sensitive information refers to information that would directly or indirectly reveal any element regarding the business strategy of a company or cost related elements or information on differentiating features.

The following type of information are deemed to be sensitive i.e. information regarding turnover, margins, sourcing prices, sourcing volumes, production and processing costs, sales prices (reductions, discounts), trade conditions, product launches, R&D initiatives, chemical formulation, sales volumes, advertising and promotion budgets, media plans, expansion plans and future implantations (except if such information is available through public sources).

The sensitive nature of the above-mentioned type of information will be confirmed if they are:

- **Confidential data** - *If the data are public there is a lower risk in exchanging them;*
- **Individualized data** - *Aggregated data may lose their sensitive aspect whereas individualized data will remain sensitive;*
- Recent data** - *Data older than 5 years is deemed to have a particularly low level of sensitivity depending on the type of data.*

Therefore, the above-mentioned information shall be considered as Confidential Sensitive Information (hereafter “**Confidential Sensitive Information**”).

Nevertheless, any other data may be considered as confidential sensitive information depending on the business, context and market concerned.

### **1.1.2 Cartel agreements on price fixing or market-sharing (vertical or horizontal)**

Independent companies are forbidden from joining together to fix selling or purchasing prices, to limit production or to share markets or customers between them.

Instead of competing with each other, cartel members rely on each other's' agreed course of action, which reduces their incentives to provide new or better products and services at competitive prices. As a consequence, their customers end up paying more for less quality.

In the case of price fixing, companies will agree on prices that are generally higher than determined by the rule of supply and demand.

In the case of market-sharing, two or more competitors agree to split a market between themselves and therefore reduce competition between each other on a specific market.

Market-sharing can be done, for example:

- on a geographical basis: one company will provide services only in country A, and its competitor will agree to concentrate on another country
- or follow certain patterns: company A will agree to retire from a tender, or propose inapplicable conditions, if company B agrees not to take part in another tender

## **1.2 Sanctions for non-compliance with national and EU competition regulations**

Failure to comply with national or EU competition law can have very serious consequences such as:

- Heavy fines of up to 10% of the global group revenue;
- Actions for damages brought by competitors and customers who have been harmed by the anti-competitive behavior may seek the reparation of the injury suffered;
- Criminal sanctions for individuals: individuals (such as managers or persons involved in the decision) could also find themselves facing direct disqualification orders or even individual criminal sanctions for serious breaches of competition law;
- Exclusion from bidding in a public tender;
- Unenforceability of the agreement;
- Damage to the Association's reputation - its action might be undermined by press releases and media coverage.

The Members as well as the Association can be sanctioned in the event of anticompetitive behavior via RMI.

Sanctions for breach of competition law rules are quite heavy and the authorities conduct a factual analysis in order to determine the real impact of the practice.

## **2. Rules of conduct regarding Confidential Sensitive Information**

A key step to compliance is to understand everyone's responsibility in terms of complying with applicable competition laws and regulations while doing business, by ensuring that no-one takes part in any anti-competitive practices.

Therefore, guidelines and rules for the running of the Association will be stipulated in this Competition Charter and will apply to:

- Any Members of RMI including its employees, representatives or executives (“**Members**”) and;
- The Association, as well as its employees and interns (hereafter “**RMI’s workforce**”).

The Association and the Members are hereafter referred to collectively as the “**Parties**”.

The Parties acknowledge that communications and exchanges of Confidential Sensitive Information are prohibited. As for RMI’s activities, Confidential Sensitive Information would include, but not be limited, to any information regarding the supply chain of mica and mainly the purchasing price, the selling price and the purchased volume of mica, the running of its supply chain, the list of suppliers and commercial terms negotiated with them, expansion plans and future implantations, R&D considerations and chemical formulation including mica.

❖ The **Members** undertake to:

- Ensure that all of their employees, representatives or executives that are part of RMI’ Activity or meetings are provided with a copy of the Competition Charter;
- Never discuss Confidential Sensitive Information regarding them or another Member with other Members;
- Only disclose Confidential Sensitive Information required by RMI’s Activity to RMI’s workforce;
- Monitor the type of information received in the context of the Association - If they receive Confidential Sensitive Information, they must not disclose it.
- Not to order their employees, representatives or executives to obtain Confidential Sensitive Information from other Members or from RMI.

Each Member warrants full compliance with the above-mentioned rules by its employees, representatives or executives.

❖ The **Association and RMI’s workforce** undertake to make their best efforts to:

- Implement appropriate confidentiality measures and firewalls to ensure that Confidential Sensitive Information is kept confidential;
- Never disclose to Members the Confidential Sensitive Information collected from other Members;
- Not disclose any of the Confidential Sensitive Information received via RMI’s Activity to any other third party excluding the third parties involved in RMI’s Activity who have acknowledged the rules regarding the processing of Confidential Sensitive Information;
- Only disclose to other Members non-confidential data or Aggregated Data.

The Association warrants full compliance with the above-mentioned rules by RMI’s workforce.

- ❖ The **Association** undertakes to make its best efforts to:
  - Include confidentiality clauses in the employment contracts of its employees or the internship agreements of its interns, and provisions prohibiting them from working in another Member's mica division for six (6) months after leaving RMI.
  - Include confidentiality clauses in its contracts with third parties regarding the processing of Confidential Sensitive Information.
  - Ensure that any third party that may be involved in RMI's Activity is provided with a copy of the Competition Charter.

The above-mentioned rules apply to any kind of meeting including during RMI's work stream, social events, general assemblies, board meetings or informal gatherings.

The Parties acknowledge that each Member must negotiate and determine its mica purchase price individually.

### **3. Permitted Disclosures**

The obligations set out in Section 2 above do not apply to any Confidential Sensitive Information which:

- The Parties can show by documentary evidence was already in its lawful possession and at its free disposal before the disclosure to the Association or the other Members or;
- is or becomes lawfully disclosed to the Parties without any obligation of confidence by a third party who has not derived it directly or indirectly from RMI; or
- is or has come into the public domain through no fault of RMI or RMI's workforce.

In addition, RMI may disclose Confidential Sensitive Information to the extent required by applicable law or by lawful order or requirement of a court or governmental or other authority having jurisdiction, in accordance with such law or order or requirement.

### **4. Processing of Confidential Sensitive Information**

As previously mentioned, the running of RMI's Activity involves the collection of Confidential Sensitive Information from the Members by RMI's workforce.

In order to ensure compliance of the processing of the Confidential Sensitive Information the following rules must be complied with:

- RMI's workforce will only collect from the Members Confidential Sensitive Information necessary for RMI's Activity;
- The Members will provide Confidential Sensitive Information only to RMI's workforce;
- RMI's workforce will only collect Confidential Sensitive Information on a one-on-one basis with each Member involving separate and individual emails and exchanges;

- The Confidential Sensitive Information collected will be processed by a limited number of persons in the Association, all of whom are subject to confidentiality obligations.

Once RMI's workforce has processed the Confidential Sensitive Information, they will only be able to report to the Members an aggregated version of the data collected according to the following method (hereafter designated the "**Aggregation Protocol**"):

- The figures reported must be averages calculated on the basis of figures provided by at least five (5) different Members;
- A range of figures containing individual data can be reported (example: the individual amount is 8 – which is between 5 and 10 – the Aggregated Data will be 5-10%)
- The report shall not mention the identity of the data sources or any element that could lead to their identification;

Confidential Sensitive Information reported pursuant to the Aggregation Protocol will be designated as "**Aggregated Data**".

The Association agrees to always provide reports, documents or any information memo to Members or third parties that will only contain Aggregated Data.

## **5. Non-compliance with the Competition Charter**

The purpose of the Competition Charter is to provide instructions and guidance to the Parties on their obligations regarding Competition law. Any breach of the Competition Charter and therefore non-compliance with competition law will expose the Members to sanctions:

- Any breach of the Competition Charter by RMI's workforce will constitute a serious cause for dismissal or the termination of the internship contract;
- Any breach of the Competition Charter by a Member will result in their exclusion from the Association;

The above-mentioned sanctions will apply without prejudice to potential claims for damages initiated by the Association or any Member affected by the anticompetitive practice.

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