

# Antitrust Review

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# CHARME IS COMMITTED TO ANTITRUST COMPLIANCE

- Antitrust compliance means safeguarding fair competition, pricing and practices
- It means strict adherence to the Antitrust Policy and Guidelines
- It means following operational best practices and Do's and Don'ts
- AND it means periodic reminders of these compliance safeguards

# WHY ANTITRUST COMPLIANCE MATTERS

- Antitrust laws prohibit a wide-range of conduct
  - Coordinating on prices, customers, output, territories, bids, etc.
  - Certain distribution practices
  - Exclusionary unilateral business conduct
  - Anticompetitive mergers and joint ventures
- Collaborations between market participants, i.e, competitors, customers, suppliers, etc., carry additional antitrust risk

# WHY ANTITRUST COMPLIANCE MATTERS

- On June 11, 2024 the House Judiciary Committee's majority released an interim report claiming that collusion is forcing American companies to decarbonize and reach net-zero emission
  - Argues that ESG initiatives are pressuring corporations to disclose and reduce carbon emissions, restricting corporate free speech, and raising consumer prices.
- The same day, the House Judiciary Committee's minority released a rebuttal offering an in-depth antitrust analysis
  - Concluded that the antitrust laws do not prohibit private investors from collaborating to address ESG initiatives, including climate change risks.
- The minority report stressed that ESG collaborations should be voluntary, transparent, and not a concerted scheme to achieve unlawful objectives.

# HOW CAN CHARME MITIGATE ANTITRUST RISK?

- An “agreement” can be formal, informal, or inferred from written or oral communications or a pattern of conduct.
  - Casual conversations
  - “off-the-record” or “confidential” remarks
  - Existence of communication + parallel behavior
- Collaborations like CHARME offer an opportunity for market participants to communicate and for enforcers to infer that an agreement exists

# HOW CAN CHARME MITIGATE ANTITRUST RISK?

- Following Operational Best Practices
  - Detailed agendas and accurate notetaking
  - Antitrust compliance reminder at each meeting
  - Avoiding meetings of rivals and only rivals
  - Antitrust 101 from SPLC counsel
  - CHARME Project Forms reviewed for antitrust compliance
  - Anonymizing and aggregating data to prevent reverse engineering
  - External communications and reports reviewed by counsel
  - Reporting any and all antitrust concerns or questions:  
[compliance@sustainablepurchasing.org](mailto:compliance@sustainablepurchasing.org)

# HOW CAN CHARME MITIGATE ANTITRUST RISK

- **DO NOT** enter into an agreement or create the appearance of an agreement to engage in anticompetitive conduct
- **DO NOT** make joint commitments to exclude specific suppliers from competitive procurement processes
- **DO NOT** discuss any commercially sensitive, non-public information: including:
  - Current or future prices
  - Bid amounts, terms or decisions
  - Output or capacity levels
  - Limits on sales to certain areas
  - Key contract or sales terms
  - Salaries, wages or limits on hiring competitor's employees
  - Strategic plans
  - Expansion or contraction plans

# HOW CAN CHARME MITIGATE ANTITRUST RISK?

- **DO NOT** agree to, or discuss, refusing to do business with any competitor, customer or company in the supply chain
- **DO NOT** agree to, or discuss, any limitations on your company's activities or independent decision-making, such as changing the way you adjust pricing or make output decisions
- **DO NOT** exchange non-public, competitively sensitive information with competitors



# HOW CAN CHARME MITIGATE ANTITRUST RISK?

- **DO** understand that participation in CHARME and in any workstream recommendations is voluntary
- **DO** require participants to immediately leave any inappropriate discussions and report them to counsel for further guidance
  - **STOP / LEAVE / REPORT**
- **DO** immediately contact legal counsel if any discussion or conduct potentially violates the antitrust laws by emailing:  
**[compliance@sustainablepurchasing.org](mailto:compliance@sustainablepurchasing.org)**

# ANTITRUST COMPLIANCE IS CRITICAL

- Antitrust violations can lead to expensive **litigation, fines, damages, and prison sentences**
  - Jail time (average sentence is 20 months)
  - Criminal fines (up to \$100 million or twice gain/loss)
  - Private litigation (treble damages)
  - Disqualification from government contracts
  - Time and expense, reputational harm

