



HCAA ANTITRUST POLICY **Adopted June 9, 2005**

Introduction

There is no reason for a company or an individual to withhold participation in an association for fear of violating the antitrust laws. Courts have universally held that membership in an association and participation in traditional association activities are entirely legal and appropriate and in no manner indicate an intent to engage in unlawful trade practices.

Because trade associations are comprised of competitors, however, they do need to be sensitive to the restrictions of the antitrust laws. The antitrust laws are intended to foster and protect competition. As such, the laws prohibit particular anticompetitive activities, and more generally those, which are deemed to unreasonably restrain trade. For these reasons, this Antitrust Policy has been developed to provide a general overview of antitrust laws as applied to associations and to assist the Association in conducting its activities in conformity with those laws.

Overview of the Antitrust Laws

The basic statutes, which are applicable to trade associations, are the Sherman Act and the Federal Trade Commission Act. The Sherman Act prohibits "contracts, combinations or conspiracies in restraint of trade or commerce." Taken together, the contract, combination or conspiracy requirement has been found to exist where there is some form of agreement between two or more parties. Such agreements may be explicit, e.g., taking the form of a contract or other oral or written communication, or implicit, e.g., implied by the conduct of the parties and construed to indicate an agreement was formed.

Section 5 of the Federal Trade Commission Act prohibits "unfair methods of competition" and "unfair or deceptive acts or practices." The FTC Act's broad enforcement provision empowers the FTC to determine the meaning of "unfair." In addition, activities considered illegal under the Sherman Act also are generally unlawful under Section 5 of the FTC Act. Furthermore, Section 4 of the FTC Act empowers the FTC to take action against "incipient" unfair practices; that is, conduct which does not yet amount to--but is likely to lead to--a violation of the other antitrust statutes.

Enforcement and Penalties

The U.S. Department of Justice, States, and private parties harmed by the anticompetitive conduct of others may bring suit for violations of the Sherman Act. Enforcement of the FTC Act is vested exclusively in the FTC. Violations of the Sherman Act may result in both criminal and civil penalties. In addition, private plaintiffs may recover three times the amount of damages suffered, plus the costs of bringing suit, including attorneys' fees.

Therefore, it is imperative that all Association members, directors and officers, and staff take all appropriate measures to minimize the risk of antitrust violations.

General Antitrust Guidelines

While the antitrust laws apply to all business, there are several types of activities that are particularly relevant to trade associations.



Price-Fixing - Any agreement among competitors to raise, lower or stabilize prices is unlawful, even if the agreed-upon price is reasonable, and even if the agreement is never put into effect. Details like credit terms, discounts, and warranties are elements of price. Competitors may be charged with illegal price fixing if they discuss general pricing ranges or policies because these discussions may have an impact on actual price quotations. At no time shall any discussion or agreement among members take place regarding product prices, price changes, or any other subjects bearing on product pricing.

Agreements to Divide Customers or Territory - Territorial or market allocation involves an agreement among competitors operating at the same level of the market structure--such as manufacturers, distributors, etc.--to divide the market in such a way as to allow each party to the agreement to serve its share of the market without competition from the others. An agreement among members of an association to divide customers is an antitrust violation. The antitrust laws expressly prohibit any understanding or agreement between competitors or members of an association involving division or allocation of customers or territory. Even an informal agreement whereby one member agrees to stay out of another's territory will constitute a violation.

Group Boycotts - A collective refusal by otherwise competing companies to deal with some third party, sometimes called a "group boycott," raises serious antitrust concerns. It is unlawful for one company to agree with another company that neither one will do business with a particular supplier or customer, or that they will do business only with certain suppliers or customers or only on certain terms and conditions.

Membership Restrictions – As a general rule, any company that meets the criteria for membership and pays the applicable dues should be admitted, and allowed to remain, as a member. Considerations such as competitive concerns, commercial disputes, or personal animosity should not be a basis for denying or revoking membership; a trade association is not a social club. Denial of, or expulsion from, membership may constitute a restraint of trade because it could limit the ability of the applicant or nonmember to compete.

Product Standards – Many associations develop standards related to product manufacture, performance, or compatibility. These standards must be prepared through a consensus process that is balanced and allows for participation by all interested parties, and must be based on objective technical, engineering, and safety factors. Whether a member chooses to offer products in conformance with any standard shall be a voluntary decision.

Codes of Ethics - Associations may develop a code of ethics or business practices, and membership in the association may be contingent upon adherence to such rules. However, a code or similar document may not unlawfully regulate legitimate business practices, such as advertising that is not false or misleading, competition with other association members, or offering products or services at reduced prices. Any enforcement process must be fair and non-discriminatory.

Industry Statistics - The compilation and distribution of industry data on various topics is one of the most valuable services that an association can provide. These programs should be administered by the association to ensure that reports consist of data in composite form, and the information submitted by specific member companies is not revealed. Statistical programs also may not be used a means of fixing prices, allocating production, or otherwise restraining trade.

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Association Antitrust Compliance Policies and Procedures

It shall be the policy of the Association to be in strict compliance with all Federal and State Antitrust laws, rules and regulations. Therefore:

- I. These policies and procedures apply to all membership, board, committee and other meetings sponsored by the Association, and to all meetings attended by representatives of the Association.
- II. Discussion of prices or price levels is prohibited. In addition, no discussion is permitted of any elements of a company's operations which might influence price such as:
 - a. Cost of operations, supplies, labor or services;
 - b. Allowance or discounts;
 - c. Terms of sale including credit arrangements; and,
 - d. Profit margins and mark ups, provided this limitation shall not extend to discussions of methods of operation, maintenance, and similar matters in which cost or efficiency is merely incidental.
- III. It is a violation of Antitrust laws to agree not to compete, therefore, discussions of division of territories or customers or limitations on the nature of business carried on or products sold are not permitted.
- IV. Boycotts in any form are unlawful. Discussion relating to boycotts is prohibited, including discussions about blacklisting or unfavorable reports about particular companies including their financial situation.
- V. It is the Association's policy that all meetings attended by representatives of the Association where discussion can border on an area of antitrust sensitivity, that the Association's representative request that the discussion be stopped and ask that the request be made part of the minutes of the meeting being attended. If others continue such discussion, the Association's representative should excuse herself from the meeting and request that the minutes show that she left the meeting at that point and why she left. Any such instances should be reported immediately to the President and Executive Director.
- VI. It is the Association's policy that a copy of these Antitrust Compliance Policies and Procedures be given to each officer, director, committee member, official representative of member companies and Association employees annually and that the same be read or understood at all meetings of the membership of the Association.



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(to be distributed at all Association Meetings)

Association Meetings - To minimize the possibility of antitrust problems at association gatherings, the following guidelines should be followed at all meetings of the Board of Directors and committees, as well as all association-sponsored conventions, trade shows, training seminars, conferences, and task force and working group sessions.

- **DO NOT** discuss your prices or competitors' prices with a competitor (except when buying from or selling to that competitor) or anything, which might affect prices such as costs, discounts, terms of sale, or profit margins.
- **DO NOT** agree with competitors to uniform terms of sale, warranties, or contract provisions.
- **DO NOT** agree with competitors to divide customers or territories.
- **DO NOT** act jointly with one or more competitors to put another competitor at a disadvantage.
- **DO NOT** try to prevent your supplier from selling to your competitor.
- **DO NOT** discuss your future pricing, marketing, or policy plans with competitors.
- **DO NOT** discuss your customers with your competitors.
- **DO NOT** make statements about your future plans regarding pricing, expansion, or other policies with competitive overtones. Do not participate in discussions where other members do.
- **DO NOT** propose or agree to any standardization, which will injure your competitor.
- **DO NOT** attend or stay at any informal meeting where there is no agenda, no minutes are taken, and no association staff member is present.
- **DO NOT** do anything before or after association meetings, or at social events, which would be improper at a formal association meeting.
- **DO** alert association staff and legal counsel to anything improper.
- **DO** send copies to an association staff member of any communications or documents sent, received, or developed by you when acting for the association.
- **DO** alert every employee in your company who deals with the association to these guidelines.
- **DO** be conservative. If you feel an activity might be improper, ask for guidance from association staff or legal counsel in advance.