



Anti-Trust Policy

To ensure strict compliance with the antitrust laws of the United States, ACA has prepared this Antitrust Policy. These clear statements of conduct must always be kept in mind, and all Corporation meetings and other activities must be conducted in accordance therewith.

Section 1 of the Sherman Antitrust Act and Section 5 of the Federal Trade Commission Act prohibit "contracts, combinations or conspiracies in restraint of trade and unfair methods of competition in commerce..."

One of the clearest antitrust violations an corporation can commit is an agreement by its members to set prices at a fixed level. Such an agreement is a *per se* violation of the antitrust laws, even if the prices set are reasonable or the ends sought are worthy. Similarly, terms and conditions of sale which affect the buyer should not be discussed. These include discounts, freight allowances, terms of product warranties and other individual policies followed in dealing with customers. Informal understandings and planned courses of action on these subjects by competitors also clearly are forbidden.

Administrative or disciplinary action against member companies, or the expulsion of member companies, may result in economic injury to the affected members and, thus, may constitute an illegal boycott or restraint of trade. Therefore, these sensitive areas must be discussed in accordance with strictly-defined legal guidelines and only in the presence of counsel.

Frequently, an corporation engages in the voluntary development of a product specification or industry standard of quality. Antitrust problems can arise if the standard developed advances the economic interests or operates as a marketing advantage for some members to the detriment of others.

Statistical reporting is another common corporation-sponsored activity. However, since some other corporations and their members have used these activities in the past to further price-fixing and monopolistic schemes, statistical reporting projects must be conducted with great care in order to conform with clearly-defined rules regarding the collection, protection, and dispersal of confidential product information. Antitrust problems also may arise when corporations become involved in industry-wide research and development programs. When pooling of results exists, corporation-sponsored joint research and development activities may injure competition by diluting the competitive pressure to innovate.

A potential antitrust infraction can also involve normally protected corporation-sponsored efforts to petition government agencies for action. A delicate balance always must be maintained between the First Amendment right to petition government and the antitrust laws' prohibition against restraint of trade. The First Amendment does not protect parties which seek to prod government agencies into imposing trade restrictions by misleading them or by engaging in other dishonest activities. Any effort designed to injure industry competitors clearly is prohibited.

The proper conduct of corporation meetings requires an understanding and conscious awareness *by all* of antitrust implications. Your non-participation in the discussion (pro or con) may not protect you if, out of such discussions at a meeting you attend, any agreement in restraint of trade originates. However, no imputed unlawful purpose can arise if conscious independent and individual judgment is exercised and no illegal common course of action is pursued.

From time to time, ACA member companies might solicit the support of the Corporation in circumstances involving government administrative actions directed against that company. In such situations, the appropriate role of the Corporation is to act in a manner consistent with the interests of the membership as a whole. Accordingly, any assistance provided individual corporation members shall be done solely with a view toward protecting or advancing the interests of the industry and shall seek, where appropriate, to promote favorable government policies or foster precedent advantageous to the entire industry.

BE ALERT AND KEEP INFORMED. Antitrust laws are wide-ranging, complex, and subject to changing interpretations. Consult your company's lawyer or a Corporation counsel immediately if you have any questions about the legality of any proposed Corporation action.

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CONTINUED ON NEXT PAGE →



Avoidance of Liability

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Nine Don't's

1. Do not attend rump sessions. The suspicions of the authorities are always aroused when they learn that following a corporation meeting the members commonly gather at some motel or local bar to discuss matters of concern to the industry.
2. Do not even discuss with competitors activities that will: a. allocate markets, b. initiate boycotts, c. fix prices, d. limit production, e. hinder nonmembers, or f. coerce members.
3. Do not attend meetings where procedural rules are not followed and counsel is not present. If agenda is uncertain, the meeting is not chaired, and the counsel is not present, the potential for abuse is great.
4. Do not exchange data concerning fees, prices, production, sales, bids, costs, customer credit, or other business practices unless the exchange is made pursuant to a well-considered plan that has been approved by antitrust counsel.
5. Do not ratify the actions of a corporation or of a corporation officer where counsel has not opined on the legality of the action.
6. Do not engage in advertising programs where the purpose or effect is to stabilize prices or mislead the public. If an advertising program is proposed and accepted by the corporation, be certain that it has been approved by counsel to insure that the program will not adversely affect price competition or have a predatory or coercive effect on nonmembers.
7. Do not discriminate against competitors when:
a. setting ethical standards, b. revealing customer credit information, c. developing a seal of approval program, or d. developing standards or specifications for products.
8. Do not continue membership in a corporation if the activities are questionable. Do not rely on initial governmental sponsorship.
9. Do not accept an official position in the organization unless your authority is commensurate with your apparent responsibility.

Nine Do's

1. Do retain private counsel to advise you concerning the possible risks involved in your corporation activities.
2. Do request Federal Trade Commission advisory opinions if there is doubt concerning the objectives and effects of the proposed activities of the corporation.
3. Do periodically review the decision to join an association, particularly if it becomes subject to a restraining order or other governmental prohibitions.
4. Do cooperate with government investigations.
5. Do insist that an attorney attend all corporation meetings, review the agenda in advance and the minutes following the meetings; and do compare your notes, recording, or recollection with the reported minutes.
6. Do object to questionable activities, and make sure your objection is recorded.
7. Do resign in writing if the corporation is acting in a manner that disregards antitrust risks and ignores objectives to such activity.
8. Do insist that the corporation share market data and statistical information (for a reasonable fee) with nonmember competitors if such data is necessary to their competitive actions.
9. Do ask that the corporation obtain a periodic independent review of its bylaws and procedures for potential antitrust problems.