

# ANTITRUST GUIDELINES

The antitrust laws are designed to ensure that business is conducted in an open, competitive atmosphere and that competition is not unreasonably restricted. A challenging aspect of the antitrust laws is that they are complex and the general language in which they are written does not always specify the precise conduct that is unlawful. Further, an anti-competitive agreement need not be formal or even express and can be proven by either direct or circumstantial evidence. Thus, if circumstances such as competitors' exchange of pricing or similar plans permit the inference of a tacit understanding to "act in concert," a judge or jury could find an intentional violation of the law. Because the courts have sometimes deemed trade and industry associations to be possible "hotbeds of conspiracy," this Association is committed to insuring that none of its activities, as carried out by its staff and members, even remotely suggest antitrust misconduct. Therefore, to avoid accusations of violating antitrust laws, whenever you attend an Association event or are engaged in Association-related activities or conversations, your conduct must be consistent with these Guidelines.

## **Why You Should Be Concerned**

The Sherman Antitrust Act makes illegal actual and attempted monopolization and agreements (or conspiracies) that unreasonably restrain trade or commerce. This statute is enforced both by the government and by private parties. Criminal violations of the Sherman Act are felonies punishable by fines (up to \$11 million per violation for corporations and \$350,000 per violation for individuals) and, in the case of individuals, imprisonment. In addition to government enforcement, those injured by anticompetitive conduct may sue to recover treble damages and all their attorneys' fees. The Federal Trade Commission Act, which is enforced by the Federal Trade Commission and state attorneys general, makes unlawful unfair or deceptive acts or practices, as well as unfair methods of competition, even if engaged in by only one person or entity; violations of the FTC Act result in a consent order with the government, the violation of which is punishable by severe fines.

Because bringing antitrust lawsuits is encouraged, accused individuals, associations and corporations, whether innocent or guilty, can easily be exposed to the aggravation, inconvenience, and costs of defense of such a suit. Your ultimate task, as a member of this Association, is both to comply with the antitrust laws and to act in such a manner that you avoid even an appearance of improper conduct. Accordingly, there is a need for all members of this Association to ensure their own compliance with these Guidelines and to suggest to others, who might inadvertently stray, that being vigilant benefits us all.

## **What Is Prohibited**

Prohibited by the antitrust laws are agreements to:

- Fix prices or price levels or even components of price (for example, the compensation received for particular pieces of business, such as loans, including interest rates, compensating balances, and other accommodations).
- Boycott or jointly refuse to deal with particular constituencies or other financial institutions, or to deal with them only on certain terms.
- Regulate the availability of products or services.
- Divide or allocate markets, customers or classes of customers.
- Promulgate industry standards which either are an indirect means of price-fixing or restricting innovation or which inappropriately exclude the products or services of one or more participants in the industry.
- Arrive at any understanding, express or implied, regarding anti-competitive concerted action.

## **What You Should Avoid**

At meetings of the Association and even in conversations occurring in connection with Association business, whether or not at an Association meeting:

- Do not agree - or engage in any form of conduct or conversation from which it may be argued that you agreed - to fix rates, fees, or any other element of "prices" or terms of transactions. Agreements to stabilize or even to lower prices can be deemed anti-competitive. Even a discussion, without a formal or informal agreement, can become part of an unlawful conspiracy if it is followed by uniform action.
- Do not share information concerning your prices, including price components and costs, pricing strategies or profit margins.
- Do not agree to treat a particular individual or group in one set manner, to stop transacting with certain kinds of individuals or groups, or to transact with them only on specified terms.
- Do not make announcements concerning what your institution may or may not do concerning particular transactions or concerning pricing or other terms for certain individuals, groups or classes of customers.
- Do not disclose confidential, proprietary, or competitive information or your institution's corporate strategies.

### **What You Can Do**

- You may discuss common problems and challenges of a general, administrative, or logistical nature, as long as a purpose or effect is not to encourage uniform action which may eliminate or restrict competition with respect to future transactions. It is permissible to discuss deteriorating or problematic areas, provided that the discussion does not form the basis for subsequent unlawful conduct. These discussions are safest if approved in advance by the Executive Committee and/or monitored by the Association's professional staff or legal counsel.
- Information provided to others should be limited to non-confidential data or other records that are believed factual and accurate.
- Standards-development activities are appropriate, provided that they are not a means of achieving an otherwise anti-competitive result.
- You may communicate as necessary to form an Association position to be communicated to the government, i.e., a federal, state or local executive, legislature or agency, but do not discuss "standing up" to groups of competitors or constituencies, or to anyone except the government.

### **How You Can Avoid Even the Appearance of Impropriety**

Because the potential for conduct violating the antitrust laws is often greatest at Association meetings, those responsible for such meetings must comply with the following procedures:

- Prepare a written agenda that specifies the subjects to be addressed at the meeting. Should you anticipate that antitrust-sensitive issues may arise, discuss those matters in advance either with the Executive Committee, the Association's professional staff or the Association's legal counsel.
- Limit discussion at the meeting to the items on the written agenda. Be prepared to monitor and, if necessary, redirect the group away from inappropriate discussions. Halt discussions which you feel are contrary to these Guidelines.
- Take minutes that accurately reflect the actions taken at the meeting. Minutes should record action, not discussion. If antitrust-sensitive topics were addressed at the meeting, have the draft minutes reviewed by the Association's legal counsel in advance of their distribution.
- Because denial of membership in the Association may itself have antitrust consequences, seek advice from the Executive Committee, the Association's professional staff or the Association's legal counsel if your group wishes to consider issues of membership eligibility, exclusion or suspension. Similarly, the creation of codes of ethics or other forms of self regulation require guidance from the Executive Committee before being discussed in another Association forum.