

CMAA ANTITRUST GUIDELINES

The policy of the Club Managers Association of America (CMAA) is to comply fully and strictly with both federal and state antitrust laws. Full compliance with the antitrust laws is a requirement for CMAA membership, and responsibility for compliance rests with each member.

Professional associations are recognized as valuable tools of American business. Nevertheless, since CMAA is by its nature a combination of competitors and other market participants, CMAA and its members must ensure that their activities do not constitute an illegal restraint of trade, or even create the appearance of such an anticompetitive restraint.

In this respect, there are a number of association activities that have the potential to raise issues of antitrust and trade regulation. These areas, addressed in greater detail below, include discussing certain categories of sensitive information; membership restrictions; statistical programs; standards setting; certification, and self-regulation; and public policy advocacy/lobbying; among other issues.

These guidelines are intended to assist you in understanding and fulfilling your responsibility to comply with CMAA's antitrust policy. In addition, please refer to the "Summary of Antitrust Dos and Don'ts" at the end of these guidelines for additional best practices.

DISCUSSIONS AT MEETINGS OR VIA ELECTRONIC/VOICE COMMUNICATIONS

Participants at CMAA meetings, whether meetings of the membership, the governing board, officers, committees, or subcommittees, must be aware that discussions of certain subjects raise grave antitrust dangers and therefore must be avoided. This also applies to group e-mails and other forms of electronic/voice communications to groups of people.

- The following topics of discussion must be avoided:
 - Current or future prices (great care should also be taken when discussing past prices)
 - What constitutes a fair profit or margin level
 - Possible increases or decreases in prices
 - Standardization or stabilization of prices
 - Pricing procedures
 - Cash discounts
 - Credit terms
 - Control of sales

- Allocation of markets
- Refusal to deal with a firm because of its pricing or distribution practices
- Whether or not the pricing practices of any industry member are unethical or constitute an unfair trade practice
- The following topics of discussion can be appropriate at CMAA meetings or via other electronic/voice communications:
 - Reporting on general industry or profession economic trends
 - Describing advances or problems in relevant technology or research
 - Demonstrating methods by which an individual or Club can become more profitable by acquiring better knowledge of its own costs
 - Summarizing effective methods of purchasing and marketing
 - Educating about various aspects of the science and art of management
 - Considering industry or profession relations with local, state, or federal governments
 - Reporting on experiences and developments in employment relations
 - Relating efforts toward improvement of services
 - Developing ways to respond to consumer or environmental issues
 - Effecting energy use and supply
- Members have an obligation to terminate any discussion, seek legal counsel's advice, or, if necessary, terminate any meeting if the discussion might be construed to raise any antitrust risks.

MEMBERSHIP RESTRICTIONS

Professional associations are permitted to adopt objective and reasonable standards for membership. Exclusionary membership practices that affect a market participant's ability to compete, however, may raise antitrust issues. Similarly, denial of membership or discrimination in membership terms may place competitors at a disadvantage if membership is necessary to compete in the industry on equal terms. Thus, membership criteria must be clearly articulated and based on neutral, objective factors calculated to promote efficiency-enhancing and pro-competitive goals.

- Associations (and their chapters or grassroots organizations) exist to provide information and services that enable members to do business more successfully.

- Associations ordinarily may restrict membership to persons engaged in the same field.
 - Associations ordinarily may restrict membership to those engaged in a trade or business within some recognized geographic boundaries.
 - Associations ordinarily may restrict membership to those willing to adhere to a reasonable code of business or professional conduct and to those demonstrably able to promptly pay dues.
- Although association membership is ordinarily a privilege that may be granted or denied if done so on reasonable grounds, association membership may sometimes become a right when denial of it would result in a serious economic disadvantage.
 - To restrict from membership one who is part of the field represented by the association may deprive the excluded person of the ability to compete on an equal basis with association members and, thus, may violate antitrust laws.
 - The greater the competitive advantage derived from association membership, the more likely it is that exclusion of a competitor from membership will be considered an unreasonable restraint of trade in violation of antitrust laws.
 - Restrictions on association membership because of race, religion, or sex ordinarily are not permissible and could be struck down under common law or discrimination law criteria. The same is true of restrictions based merely on unpopular business or professional views or practices of applicants (e.g., price discounting).
 - Restrictive membership rules “must be shown to be justified by the legitimate competitive needs of the association.”
 - Subjective membership criteria are generally not narrowly tailored to accomplish any legitimate goal of an association.
 - Membership rules may not seek to intentionally exclude competitors from access to the competitively significant benefits of membership. To do so is *per se* unlawful.
 - Membership fees charged to new members that are excessive and do not represent a fair share of costs may unreasonably exclude competition without furthering a competitive need of the association.

STATISTICAL PROGRAMS/SURVEYS

Every organization can benefit from access to statistical data on sales, dues, costs, labor rates, and other economic and business factors about its industry. Statistical programs are designed to survey and report on business conditions and provide the means for measuring one's own performance against the norms of competitors in an industry. For many, statistical reports issued by their association are considered indispensable tools for maximizing productivity, efficiency, and profitability.

- Structured properly, an information exchange program is a legitimate and necessary function of a professional association. Nonetheless, because of the risk that information collected as part of an information exchange could be used for unlawful purposes (for example, as the basis for an agreement to fix prices or restrict output between competitors), a number of precautions must be taken:
 - Participation in the statistical program must be voluntary. No direct or indirect coercion should be applied to force, require, or intimidate association members or nonmembers to participate.
 - The purpose of the program should be promulgated and understood by all as the collection and furnishing of specific useful business or professional information rather than the effecting of any agreement or understanding with respect to business or professional activities.
 - Information received and published should be historical rather than projected. Only past data or completed transactions should be used. The less current the information, the less likely it can be used as the basis for an illegal agreement or understanding.
 - The confidentiality of information supplied by each participant must be maintained. Only composite or average figures should be used in statistical reports. No average or composite should be used where less than five individual component figures are available lest one participant be able to extrapolate information on the other or others.
 - Data supplied by individual participants should not be shown to any other participants for any reason.
 - Published association statistical reports should not contain comments on the information contained in the reports that could in any way interpreted as an exhortation to participants that they take some joint or concerted action in response to the information.
 - Unless retention of the information is considered particularly important for some purposes, individual submissions by participants in association statistical programs should be returned or discarded as soon as they have been used to make composite or average computations to avoid release in some subsequent government or private investigation or suit of data that participants may consider confidential.
 - Statistical programs ordinarily should not include price or fee information except under compelling circumstances. Price and fee reporting may be undertaken under strict rules, but it must be understood that no legal safeguards can absolutely protect association-published price and fee information from being used for illegal purposes.

CERTIFICATION AND SELF-REGULATION

While association certification and self-regulation can serve valuable procompetitive purposes, programs that unreasonably further the interests of certain members to the exclusion of others may raise antitrust concerns. Even if an association's intent is to improve members' ethical conduct and provide the public with better products and services, it still may violate the antitrust laws. Any industry certification program or attempt at self-regulation must be based on sound, objective justifications; must be reasonably related to the goals it is intended to achieve; must be no more extensive than is necessary to accomplish those goals; and must incorporate reasonable procedural safeguards to ensure that participants are not arbitrarily discriminated against.

PUBLIC POLICY ADVOCACY/LOBBYING

Under the *Noerr-Pennington* doctrine of antitrust immunity, joint action by professional associations or groups of competitors such as CMAA to influence government policy generally does not violate the antitrust laws. This doctrine generally includes legislative activity, litigation in the courts, and proceedings before administrative bodies, which are protected under the First Amendment to the Constitution.

However, seeking government action in order to injure a competitor directly – rather than as a result of the government action – is not protected by this immunity. For example, filing a baseless lawsuit against a competitor might be an antitrust violation if the motivation is to injure the competitor directly by hurting its reputation; in contrast, if the competitor is injured because it loses the lawsuit, there is no antitrust violation. In addition, under certain circumstances there is no immunity if a company makes false or misleading statements when it petitions the government.

While discussion of any public policy (e.g., bill, law, or regulation) is permitted under the law, CMAA members should refrain from any discussion that could be interpreted as an agreement to take common action on prices, discounts, refusals to deal, production, or allocation of customers or markets.

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Summary of Antitrust Dos and Don'ts

The following are some of the most critical “**Do's** and **Don'ts**” for antitrust compliance:

Don'ts:

- **DON'T** discuss prices, fees or rates, or features that can impact (raise, lower, or stabilize) prices such as discounts, costs, salaries, terms and conditions of sale, warranties, or profit margins.
- **DON'T** share data concerning fees, prices, production, sales, bids, costs, salaries, customer credit, or other business practices unless the exchange is made pursuant to a well-considered plan that has been approved by CMAA's legal counsel.
- **DON'T** agree with competitors as to uniform terms of sale or contract provisions.
- **DON'T** agree with competitors as to restrictions on production or other output.
- **DON'T** agree with competitors to divide customers, markets, or territories.
- **DON'T** agree with competitors not to deal with certain suppliers, customers, or others.
- **DON'T** try to prevent a supplier from selling to your competitor(s).
- **DON'T** discuss your customers with your competitors.
- **DON'T** agree to any association membership restrictions, standard-setting, certification, accreditation, or self-regulation programs without consultation and approval by CMAA's legal counsel.

Dos:

- **DO** insist that CMAA meetings have agendas that are circulated in advance, and that minutes of all meetings properly reflect the actions taken at the meeting.
- **DO** leave any meeting (formal or informal) where improper subjects are being or will be discussed. Tell everyone why you are leaving.
- **DO** ensure that only CMAA staff sends out all written and electronic correspondence on behalf of CMAA and that CMAA's officers, directors, committee members, or other members do not hold themselves out as speaking or acting with the authority of CMAA unless they do, in fact, have such authority.
- **DO** seek legal advice from your own counsel or from CMAA's legal counsel if you have questions regarding the antitrust laws or your responsibilities under these laws.

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