

NCMA Antitrust Policy

The antitrust laws are the rules under which our competitive economic system operates. Their primary purpose is to preserve and promote free competition. It is NCMA's policy to strictly comply in all respects with the antitrust laws.

Association meetings or workshops by their very nature bring competitors together. Accordingly, it is absolutely necessary to avoid discussions of legally sensitive topics and especially important to avoid recommendations with respect to these sensitive subjects. Agreements to fix prices, allocate markets or customers, engage in product boycotts and to refuse to deal with third parties are automatically or per se illegal under the antitrust laws. It doesn't matter what the reason for the agreement.

Accordingly, at any association meeting discussions of prices, including elements of prices such as allowances and credit terms, quality ratings of suppliers, and discussions which may cause a competitor to cease purchasing from a particular supplier, or selling to a particular customer, must be avoided. Also, there should be no discussion that might be interpreted as a dividing up of territories or customers.

An antitrust violation does not require proof of a formal agreement. A discussion of a sensitive topic, such as prices, followed by parallel action by those involved in or present at the discussion is enough to show a price fixing conspiracy. As a result, those attending an association-sponsored meeting must remember the importance of avoiding not only unlawful activities, but even the appearance of unlawful activity.

As a practical matter, violations of these rules can have serious consequences for a company and its employees. The Sherman Antitrust Act is both a civil and criminal statute. Violations are felonies punishable by penalties of up to \$10 million for corporations and by imprisonment of up to three years or penalties of up to \$100,000, or both, for individuals. The Justice Department, state attorney general, and any person or company injured by a violation of the antitrust laws may bring civil actions for three times the amount of the damages, plus attorneys' fees and injunctive relief.

Antitrust investigations and litigation are lengthy, complex, disruptive and expensive. Therefore, all companies and their employees must not only comply with the antitrust laws in fact, but must conduct themselves in a manner that avoids even the slightest suspicion that the law is being violated. Associations, because they bring competitors together, are natural targets, along with members alleged to have participated with or through the association.

The following is a list of topics that must never be the subject of any type of agreement among competitors, whether explicit or implicit, formal or informal. Such topics should NEVER be discussed at association meetings. This list is not exhaustive of prohibited topics or subjects. Please consult legal counsel in the event of any confusion or question over whether a topic is permissible or appropriate for discussion among association members:

- a. Prices to be charged to clients, customers or by suppliers;
- b. Specific methods by which prices are determined, with directions as to "how to do it" or even less;
- c. Division or allocation of markets or customers;
- d. Coordination of bids or requests for bids;
- e. Terms and conditions of sales, including credit or discount terms;
- f. Terms for distribution of products;
- g. Targets for production of products or the level of production;
- h. Specific profit levels;
- i. Exchange of price information as to specific customers;
- j. A boycott of or a refusal to deal with a customer or supplier;
- k. Compilation of "approved" lists of customers or suppliers.
- l. "Profit" levels...i.e., "here's what our members need to do to make money."
- m. Whether a company's pricing practices are "unethical," "improper," etc.
- n. Coordination of "bids" or "requests for bids" or requests for proposals ("RFPs").
- o. Standards or codes to eliminate competition.

When in doubt about discussing any topic, consult with your own legal counsel, or with association staff or its legal counsel, to be sure you are on safe antitrust ground. When unsure, play it safe and avoid the topic.

Conflict of Interest Considerations:

- placing (or the appearance of placing) one's own self-interest or any third-party interest above that of the Association; while the receipt of incidental personal or third-party benefit may necessarily flow from certain Association activities, such benefit must be merely incidental to the primary benefit to the Association and its purposes;
- abusing their Board membership by improperly using their Board membership or the Association's staff, services, equipment, resources, or property for their personal or third-party gain or pleasure, or representing to third parties that their authority as a Board member extends any further than that which it actually extends;
- engaging in any outside business, professional or other activities that would directly or indirectly materially adversely affect the Association;
- engaging in or facilitate any discriminatory or harassing behavior directed toward Association staff, members, officers, directors, meeting attendees, exhibitors, advertisers, sponsors, suppliers, contractors, or others in the context of activities relating to the Association;
- soliciting or accepting gifts, gratuities, free trips, honoraria, personal property, or any other item of value from any person or entity as a direct or indirect inducement to provide special treatment to such donor with respect to matters pertaining to the Association without fully disclosing such items to the Board of Directors; and
- providing goods or services to the Association as a paid vendor to the Association only after full disclosure to, and advance approval by, the Board, and pursuant to any related procedures adopted by the Board.