



ANTITRUST COMPLIANCE GUIDE



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FOREWORD

It is the American Chemistry Council (ACC)'s policy to strictly comply with federal and state antitrust laws. Each member company representative, officer, and employee of the American Chemistry Council has responsibility for compliance.

To assist in identifying situations that may have antitrust implications, ACC's Office of General Counsel has prepared this Antitrust Compliance Guide. The Guide will familiarize you with the basics of antitrust law, but it is not a complete statement of the law and not a substitute for the advice of legal counsel. Contact the Office of General Counsel immediately if you encounter a situation that might have antitrust implications for ACC, and direct any questions related to antitrust compliance to the office of General Counsel.

Every member company representative, officer and employee of ACC has the following responsibilities:

- To read and understand this Antitrust Compliance Guide;
- To be vigilant to ensure antitrust compliance; and
- To consult promptly with the Office of General Counsel with respect to activities that may have antitrust implications.

In addition, it is the responsibility of every ACC employee to attend mandatory antitrust compliance training sessions as offered by the Office of General Counsel.

Thank you for your continued diligence in maintaining compliance with the antitrust laws, which is fundamental to ACC's continued success.



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ANTITRUST COMPLIANCE GUIDE

ACC strictly complies with U.S. federal and state antitrust laws. Every ACC employee, director, officer, and member company participant in any ACC event or activity is responsible for compliance.

- To assist in identifying circumstances that may have antitrust implications, ACC's Office of General Counsel has prepared this Antitrust Compliance Guide. The guide is intended to provide a general understanding of U.S. antitrust law, but it is not a complete or definitive statement, does not address antitrust laws outside the U.S., and is not a substitute for the advice of legal counsel. ACC's Office of General Counsel should be contacted immediately whenever a circumstance may arise that might have antitrust implications for ACC. Refer any specific questions related to antitrust compliance to ACC's Office of General Counsel.

ACC employees, directors, officers, and member company participants in any ACC event or activity have the responsibility to:

- Read and understand the Antitrust Compliance Guide;
- Consult with ACC's Office of General Counsel with respect to activities that may have antitrust implications;
- Attend antitrust compliance sessions as presented by ACC's Office of General Counsel; and
- Be vigilant at all times to ensure antitrust compliance.

ACC's aim is not only to avoid actual violations of the law, but also to prevent even the appearance of a violation that might invite suspicion or investigation on the part of the enforcement authorities. ACC has therefore adopted and observes several basic principles:

- It has well-defined, constructive objectives and programs designed to promote the overall interest of the industry and the public.
- It maintains various procedural safeguards in the conduct of its meetings.
- Its Office of General Counsel assists with the observance of the above policies and procedures, and provides guidance and protective advice to all ACC operations from an antitrust standpoint.
- Activities concerned with pricing of chemical products are avoided. Collecting and reporting data can only be undertaken after consultation with ACC legal counsel.
- It has approved the issuance of the Antitrust Compliance Guide for use by ACC staff and member company committees and groups.

TRADE ASSOCIATIONS AND U.S. ANTITRUST LAWS

Trade associations perform many useful and lawful functions. Because they are composed of competitors, however, they can become the focus of antitrust scrutiny such as investigations or litigation under the antitrust laws. ACC employees, officers, and member company participants must be constantly vigilant for potential antitrust implications of ACC events, activities, and programs. ACC has developed the Antitrust Compliance Guide as a tool to assist in complying with U.S. antitrust laws.

PURPOSE OF ANTITRUST LAWS

Antitrust laws are intended to promote competition. Competition among sellers in an open marketplace gives consumers — both individuals and businesses — the benefits of lower prices, higher quality products and services, more choices, and greater innovation. In general, antitrust laws prohibit anticompetitive behavior that impacts markets in such a way that consumers are deprived of the benefits of competition.

PRINCIPAL FEDERAL ANTITRUST LAWS

The United States and the individual states have antitrust laws. In addition, more than 100 countries have their own antitrust laws, often referred to as “competition” laws, and the European Union has its own antitrust laws.

In the United States, the main antitrust laws at the federal level are the Sherman Act, the Clayton Act, the Robinson-Patman Act, and the Federal Trade Commission Act.

SHERMAN ACT

The Sherman Act has two important sections:

1. Section 1 prohibits contracts, combinations, or conspiracies between two or more companies or persons that unduly restrain trade. This section prohibits agreements among competitors to fix prices, allocate customers or markets, limit production, or eliminate a competitor.
2. Section 2 prohibits monopolizing conduct, attempts to monopolize, and conspiracies or combinations between two or more companies or persons to monopolize a market.

Violation of the Sherman Act is a felony. The statute authorizes prison terms of up to 10 years, fines of up to \$100,000,000 for corporations, and fines of up to \$1,000,000 for individuals.

The U.S. Department of Justice pursues criminal enforcement for what are called per se violations of the Sherman Act, such as price fixing, customer or territory allocation, or bid rigging. The Department has a formal amnesty program, which may be available to the first corporation to provide information on an illegal conspiracy to avoid criminal prosecution.



For violations of the Sherman Act that are not per se, the Department of Justice will typically investigate through civil processes. The Department may use judicial processes to seek to enjoin or stop conduct that violates the Sherman Act or Clayton Act. Note that Department of Justice prosecution of a criminal or civil suit often invites private civil litigation, and private litigants may be entitled to triple damages.

CLAYTON ACT

The Clayton Act allows the U.S. government or private parties to bring civil actions to enforce the Sherman Act and other federal antitrust laws. Civil actions under the Clayton Act may seek money damages and also injunctive relief. Any damages awarded in Clayton Act litigation are tripled, and a successful plaintiff can also be awarded its attorney fees.

The Clayton Act outlines additional categories of behavior that can be illegal, including exclusive dealing, requirements contracts, and tying agreements; certain anticompetitive behavior related to mergers and acquisitions; and certain interlocking directorates.

The Clayton Act may be enforced by the U.S. Department of Justice, the Federal Trade Commission, or private parties in civil suits.

FEDERAL TRADE COMMISSION ACT

The Federal Trade Commission Act prohibits unfair methods of competition and unfair or deceptive acts or practices. Unfair methods of competition can be construed to mean behavior that violates the Sherman or Clayton Acts; it can also be conduct that does not implicate those acts. Certain behavior outside the antitrust laws, such as false advertising, is addressed by the Act.

The Federal Trade Commission Act does not have criminal penalties. It is enforced by the Federal Trade Commission (FTC), which can seek cease and desist orders. Violations of FTC enforcement orders can trigger steep fines.



ROBINSON-PATMAN ACT

The Robinson-Patman Act originated to protect small businesses from price discrimination. The Act prohibits selling commodities of like grade and quality to different customers at different prices if the behavior has certain adverse effects on competition or promotes monopolization.

The Act may be enforced by the Federal Trade Commission; however, most enforcement is by private parties. The Act authorizes triple damages.

SHERMAN ACT VIOLATIONS

Most antitrust cases prosecuted criminally are so-called per se violations of the Sherman Act. Per se violations are those categories of agreements that are deemed so inherently harmful to competition that they can be conclusively presumed to be unreasonable restraints on competition without regard to intent or justification. These per se violations also represent a significant portion of private lawsuits seeking triple damages.

It is extremely important to be able to recognize and avoid any conduct that could be deemed illegal per se under the Sherman Act. Trade association employees can be convicted of criminal antitrust violations, and the association required to pay triple damages, if employees or officers are determined to have participated in illegal activities with association members.

Per se violations of Section 1 of the Sherman Act include the following:

1. Price Fixing

Any agreement between competitors as to the prices either competitor will charge is illegal per se. This includes agreements regarding prices, price changes, price ranges, pricing formulae, discounts, rebates, warranties, pricing methods, sales periods, terms of credit, terms of sale, margins, or anything else that could affect price or a component of price.

Agreements among competitors on output or production are also per se illegal. Output includes factors such as actual or proposed production or changes in production, down time or turnarounds at manufacturing facilities.

2. Agreements to Allocate Customers or Territories

Agreements among competitors to allocate customers, territories or markets, or products or services are per se illegal.

3. Bid Rigging

Agreements among competitors to fix or rig bids are per se illegal.

4. Horizontal Boycotts

Agreements among competitors not to sell to a particular customer, or not to buy from a particular supplier, can be illegal per se.

Diligence should be exercised at all times to avoid any per se illegal agreement. In addition, discussion with respect to any related topic should be avoided in order to avoid the possibility of an illegal agreement being inferred from the fact of discussion of the topic. An exchange of current price information between competitors, for example, could become evidence from which an illegal price fixing agreement may be inferred. The Antitrust Checklist for ACC Meetings gives examples of topics that should not be discussed among competitors.

ANTITRUST IMPLICATIONS OF SPECIFIC TRADE ASSOCIATION ACTIVITIES

STATISTICAL REPORTING PROGRAMS

Collecting and reporting statistical data, sometimes called information exchange, is a core trade association activity. This activity can have significant pro-competitive benefits, yielding information that allows businesses to operate more efficiently and is valuable to the public and government.

These programs can collect a wide range of data, such as data on production, production capacities, inventories, sales, and shipments. One purpose of collecting data of this type is to indicate trends in the industry that reflect upon supply and demand. Association members receiving such statistical data can use the data to make better informed future business decisions; however, such decisions must be on an individual basis, without discussion among competitors.

Every statistics program is different, and the degree of antitrust risk presented will vary based on a number of factors. Any statistics program involving price, cost, or production data should be designed with the assistance of ACC's legal counsel before launching the program.

RESEARCH

Trade associations may sponsor research that benefits the industry and the public generally and is not otherwise the subject of competitive pressures. Examples include health, safety, and environmental research and research regarding the physical/chemical properties or performance of chemicals or materials. However, antitrust laws protect competition in the research fields as elsewhere, so antitrust considerations should be carefully evaluated before undertaking research projects.

OTHER ACTIVITIES

Other activities may have potential antitrust implications for ACC. Consult with ACC legal counsel in advance if you have any questions about potential implications of such activity.

CONDUCT OF ASSOCIATION ACTIVITIES

All officers and employees of ACC will receive a copy of the Antitrust Compliance Guide. A copy of the Guide will also be available to all ACC member companies on ACC's website.

The Antitrust Compliance Guide will be available at conferences and meetings sponsored by ACC; presentations on commercial topics must be reviewed in advance by ACC legal counsel.

All meetings of ACC committees and groups must be conducted in compliance with the following procedures. These procedures provide for agendas, attendance of staff representatives, and for the keeping of accurate and complete minutes--all of which are designed to avoid antitrust risks.

STAFFING

Each committee or group shall have as its staff executive and secretary an ACC employee, who shall function as its chief administrator. It shall be that individual's duty and responsibility to see that all operations and proceedings of a committee or group are conducted in conformity with their purposes and the Antitrust Compliance Guide, consulting with ACC legal counsel as necessary. On all procedural questions arising within any committee or group, including matters related to established ACC policy, the ACC employee's decision shall be accepted, pending appropriate review.



MEETINGS

The business of each committee or group shall be conducted in meetings attended by its members and by others who have a leading role in matters to be considered at the particular meeting.

- **Attendance of ACC Staff Executive.** No ACC committee or group meeting shall be held without the attendance of the staff employee assigned to it or another appropriately trained ACC employee. ACC legal counsel should also attend any meeting whenever in his opinion the nature of any subject on the agenda makes his presence desirable.
- **Frequency.** Each committee or group will meet only as necessary to perform authorized committee business as determined by the chairman in consultation with the ACC staff executive.
- **Agenda.** The staff executive assigned to each committee or group shall prepare a written agenda prior to each of its meetings, which agenda shall be cleared in advance by ACC legal counsel.
- **Minutes.** The ACC staff executive assigned to each committee or group shall keep accurate and complete minutes of all business transacted at each meeting, which shall be reviewed in advance by ACC legal counsel before their distribution.
- **Discussions Limited to Agenda.** All substantive discussions at any ACC committee or group meeting are to be limited to authorized aspects of subjects on the agenda, except where additions to the agenda are specifically approved by the staff executive assigned to the committee. The staff executive's decision as to the propriety of any subject matter raised for discussion at any meetings shall be accepted, pending appropriate review. Any discussions or occurrences at a meeting which are contrary to ACC's policies or rules that have come to the staff executive's attention shall be reported promptly to his or her supervisor and to ACC legal counsel.
- **Advocacy.** Advocacy should be conducted in lawful ways and directed solely at efforts to influence government policy. It should not be used as a sham or as a means to affect competition directly and independently of what would be the effect of the government policy which is sought to be influenced.



- **Member Diligence.** While committee and group agendas will have been cleared in advance with ACC legal counsel, it is the obligation of all committee and group member company representatives to make sure that their own participation in committee and group meetings will not give rise to even an inference of antitrust wrongdoing. Thus, even when carrying out approved and legitimate activities, member company representatives must be careful to avoid discussions among competitors concerning matters on which each must act unilaterally. Regardless of subject matter, member company representatives should not attend or tolerate any meeting with competitors in connection with ACC business which has no agenda, which is concerned with matters outside their committee's or group's mission or charge, or which otherwise fails to conform with established procedures.

INFORMAL GATHERINGS

It is important to adhere to this Guide in all discussions, not only at formal ACC committee or group meetings, but also in connection with social or other gatherings on those occasions. For both ACC employees and member company representatives, if any improper discussion should start in your presence, you should protest. If the discussion continues, ACC staff should discontinue the discussion; member company representatives should promptly excuse themselves from the discussion and communicate their protests to the ACC staff executive.

DOCUMENTS

Care must be taken to avoid wording any written documents, including reports or notes from committee or group meetings, in a way that might be interpreted as indicating, contrary to fact, the existence of an antitrust violation. Every memorandum, letter or other document dealing with prices, competition, or the other dangerous areas specified in this guide should be written with the assumption that it will one day be examined for antitrust implications. An antitrust case may be based on documents that are in reality innocuous, but have been written in such a way as to create suspicion and require explanation. Such documents may include personal notes based on recollection, or taken at committee or other meetings, which record personal impressions rather than the facts of what transpired.

INTERNAL REPORTING PROCESS

Prompt reporting must be made of any incidents involving potential violations of the antitrust laws so that corrective action may be taken. Any potential violations should be reported immediately by telephone or in person to ACC's General Counsel.

ACC employees have an independent obligation to comply with the Antitrust Compliance Guide pursuant to the ACC Code of Conduct. ACC employees, directors and officers reporting non-compliance or specific antitrust incidents are subject to ACC's Whistleblower Policy.

The Antitrust Compliance Guide is intended to help you understand how the antitrust laws bear upon trade association activities, and to carry out your ACC work in compliance with these laws and with ACC policies. Again, please remember that this is a limited outline rather than a complete description of the application of the antitrust laws. For answers to specific questions, you should consult ACC legal counsel.

ANTITRUST CHECKLIST FOR ACC MEETINGS

This antitrust checklist, a part of ACC's Antitrust Compliance Guide, is for use by ACC staff and member company representatives in the conduct of ACC-sponsored meetings. Prohibited discussion topics apply equally to social gatherings incidental to ACC-sponsored meetings. The checklist is not exhaustive and does not address antitrust issues relating to activities other than ACC meetings. Participants in ACC meetings also should be thoroughly familiar with the Antitrust Compliance Guide.

Do ensure strict performance in areas of:

Oversight/supervision:

- Have an ACC staff representative at each ACC-sponsored meeting;
- Consult with ACC legal counsel on all antitrust questions relating to ACC-sponsored meetings;
- Limit meeting discussions to agenda topics (unless additional topics have been approved by the ACC staff executive); and
- Provide each member company representative and ACC employee attending an ACC-sponsored meeting with a copy of this checklist, and have a copy available for reference at all ACC-sponsored meetings.

Recordkeeping:

- Have an agenda and minutes which accurately reflect the matters which occur; and
- Provide agendas and minutes to ACC legal counsel for review and approval in advance of distribution.

Vigilance:

- Protest against or stop any discussion or meeting activities which appear to violate this checklist; member company representatives should disassociate themselves from any such discussion or activities and leave any meeting in which they continue.

Do not, in fact or appearance, discuss or exchange information on:

Prices, including:

- Individual company prices, price changes, price differentials, markups, discounts, allowances, credit terms, etc.;
- Individual company data on costs, production, capacity, inventories, sales, etc.; and
- Industry pricing policies, price levels, price changes, differentials, etc.

Production, including:

- Plans of individual companies concerning the design, production, distribution or marketing of particular products, including proposed territories or customers; and
- Changes in industry production, capacity, or inventories.

Transportation rates:

- Rates or rate policies for individual shipments, including basing point systems, zone prices, freight equalization, etc.

Market procedures, including:

- Company bids on contracts for particular products; company procedures for responding to bid invitations; and
- Matters relating to actual or potential individual suppliers or customers that might have the effect of excluding them from any market or influencing the business conduct of firms toward them.



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