

**NATIONAL ASSOCIATION OF
GRAPHIC & PRODUCT IDENTIFICATION MANUFACTURERS**

ANTITRUST GUIDELINES

It is the firm policy of the National Association of Graphic & Product Identification Manufacturers ("GPI" and/or the "Association") to scrupulously comply with the antitrust laws. These guidelines are designed to serve as a reminder of the Association's commitment to antitrust compliance and as an aid to members in understanding their obligations under the antitrust laws.

I. GPI ORGANIZATION AND PURPOSE

GPI, founded in 1951, is a trade association of manufacturers of graphics and product identification. The purpose of the Association is to generally promote the benefits of the graphic and product identification industry and to encourage its growth through innovation and dialogue.

II. WHAT ARE THE ANTITRUST LAWS?

- A. Generally. The Sherman Act, Clayton Act, Federal Trade Commission Act and Robinson-Patman Act on the basic federal antitrust and trade regulation laws.

The Sherman Act and the FTC Act are of most concern to trade associations, since they principally deal with the activities of competitors working together. Section 1 of the Sherman Act prohibits contracts, combinations and conspiracies in restraint of trade, and the FTC Act prohibits "unfair methods of competition." These are obviously very broad concepts, but they have been refined by extensive case law.

Historically, antitrust problems have fallen into one of two categories: (1) "per se" violations - activities which are considered illegal in and of themselves, regardless of the actual effect on competition, and (2) activities which are judged under the "rule of reason", where all facts and circumstances are weighed to determine if there is an unreasonable restraint on trade.

Following are some examples of the types of activities of interest to trade associations, which have been held to violate the antitrust laws under various cases. This is obviously not an exhaustive list.

- B. Per Se Violations.

1. Price Fixing. An agreement among sellers or purchasers with respect to prices is the most serious violation of the Sherman Act and FTC Act. An agreement need not be formal, but can be inferred from a common course of conduct, even if there is no intent or motive to fix prices. To avoid even the slightest inference of price fixing, prices are not to be discussed or referred to at Association meetings and functions. Cost information must also be avoided or very carefully handled, because it can be related to price.

2. Other Terms of Sale. Other terms of sale such as discounts, credit terms, and warranties can be as important as price, and competitors may not agree on such terms.
3. Limiting Production. Agreements among competitors to limit production or capacity are generally illegal.
4. Refusals to Deal. Group boycotts against suppliers, customers or competitors are generally illegal restraints of trade.
5. Bid Rigging. Collusion on bidding projects, especially government projects, is illegal.

C. Activities Judged Under "Rule of Reason".

1. Membership. Because association membership can be in some cases deemed a valuable asset, which should not be unreasonably denied to a competitor, it is important that membership criteria and procedures be fair and not arbitrary.
2. Data Collection and Dissemination. The prohibition against price fixing and other concerted activity mean that special care must be taken in any association data collection and dissemination program, to avoid any actual or apparent violations of the antitrust laws. This is why all information collected by Association management is kept confidential, is reported on a consolidated basis, and is not discussed at Association meetings.
3. Standards and Certification. Standard setting and certification activities can be extremely beneficial association programs, but must be conducted with care because of the potential for misuse. A standards program cannot serve as a vehicle for price fixing or improper exclusionary activities. This is why the Association conducts all standard-setting activities in a carefully controlled environment, with carefully considered objectives and procedures.

III. GENERAL GUIDELINES FOR ASSOCIATION ACTIVITIES. Each company representative bears a serious responsibility at all times to comply with the antitrust laws, both a formal meetings and in informal discussions. The following rules are applicable to all Association activities:

- A. Neither the Association nor any of its committees or activities shall be used for the purpose of bringing about or attempting to bring about any understanding or agreement among the members with regard to prices, terms or conditions of sale, distribution, volume of production, territories or customers.
- B. No Association activity or communication shall include any discussion of pricing methods, production levels or other limitations on either the timing, costs or volume of production or sale, or allocation of territories or customers. No individual member's statistics or future production or sale plans will be revealed nor should they be discussed.

- C. No Association activity or communication shall include any discussion which might be construed as an attempt to (i) prevent any business entity from gaining access to any market or customer for goods or services, (ii) prevent any business entity from obtaining goods or services freely in the market.
- D. No Association activity or communication shall include any discussion which might be construed as an agreement or understanding to refrain from purchasing any raw materials, equipment, services or other supplies from any supplier.
- E. All membership, director and committee meetings shall be conducted in accordance with an agenda, and minutes shall be taken and distributed to all members.
- F. All members are expected to observe the foregoing rules both at formal meetings and in informal discussions.

IV. BASIC "DOS" AND "DON'TS". The following simple "dos" and "don'ts" may help in following the above general rules:

- A. Don't, at any time, discuss prices, pricing systems, output, discounts or other terms and conditions of sale, including credit terms.
- B. Don't discuss material or component costs that represent a significant part of total costs, or which could be interpreted as being a discussion relating to prices.
- C. Don't discuss specific company production, product or marketing plans or the selection of suppliers or customers.
- D. Don't discuss any of the published or unpublished Association statistics with other members.
- E. Do check with Association staff and counsel if there is a doubt about the legality of any Association program or any topic of discussion.
- F. Do cooperate with Association counsel on all matters, particularly when counsel has given an adverse opinion about a particular activity.
- G. Do at all times be aware of the importance of both (1) actual compliance with the antitrust laws, and (2) avoiding any appearance of non-compliance, including creating any situation which could be misinterpreted as non-compliance or conducive to non-compliance.
- H. Do think *before* you speak (or write) – always consider how your remarks could be interpreted – in or out of context.