



ACP ANTITRUST COMPLIANCE GUIDELINES

One of the major goals of ACP is to create an environment where industry members can meet and discuss policies and issues relevant to the industry with the understanding that ACP activities will be conducted in accordance with the antitrust laws. ACP recognizes the importance of the antitrust laws to preserve and foster competition and is committed to strict compliance with these laws. The ACP Board of Directors has adopted the following Antitrust Compliance Guidelines to be used by members and staff in conducting ACP activities.

Application of the Antitrust Laws to Association Activities

ACP understands that trade association activities provide opportunities for competitors to gather, discuss issues, and share business and industry information. Therefore associations must conduct their activities carefully and cautiously to ensure that they do not create situations that could result in actual or perceived violations of the antitrust laws. Antitrust compliance is important, among other reasons, because antitrust violations can result in felony convictions leading to multi-year jail sentences and civil fines and penalties in the hundreds of millions of dollars. Association members and staff may be subjected to costly and time-consuming investigations and litigation, even where no antitrust violation ultimately is found. Even thoughtless or inadvertent violations can ruin industry associations, bankrupt companies, and cause great harm to individuals' professional and personal lives. It is ACP's goal to make members aware of these laws and be proactive in ensuring compliance. Members and staff are encouraged to consult with ACP or company legal counsel if they have any questions about whether a particular action raises antitrust concerns.

Relevant Antitrust Statutes

The two antitrust laws that most affect trade association activities are the Sherman Act¹ and the Federal Trade Commission Act.² Section 1 of the Sherman Act prohibits all contracts, combinations or conspiracies that unreasonably restrain trade. For antitrust law purposes, an "agreement" need not be a formal written agreement or even an oral understanding. Unlawful agreements can be inferred from circumstances and events where there is no direct evidence of a formal agreement. Trade association activities among competitors can present a venue and opportunity to reach an anticompetitive agreement.

ACP members should understand that the nature of conspiracy law might render liable those who merely sit at a meeting while others engage in an illegal discussion, even though they did not actively participate. Mere attendance at these discussions may be enough to imply acquiescence in the scheme and make the passive person as liable as those who actively engaged in the discussion.

The Sherman Act can be enforced by the Department of Justice ("DOJ"), State Attorneys General, and under certain circumstances by private plaintiffs harmed by the alleged violation. Section 5 of the Federal Trade Commission Act prohibits "unfair methods of competition in or affecting commerce." This statute deals with illegal actions committed by individuals and/or companies and, unlike the Sherman Act, does not require the existence of a conspiracy. This statute is enforced by the Federal Trade Commission (FTC), which has broad powers to determine what constitutes unfair methods of competition. ¹ FTC investigations tend to focus on industry practices and association activities that the FTC considers to be unfair trade practices. Associations are frequent targets of such investigations. If the FTC finds the existence of an unfair trade practice, it will impose fines and consent decrees upon participants.