



GOV-005

ANTITRUST COMPLIANCE

It is the policy of the Association to comply fully with all applicable laws, including the antitrust laws, and accordingly, all activities of the Association shall be conducted in accordance with its antitrust compliance guidelines, as set forth below and as may from time to time be adopted or modified by the National Leadership Board.

Antitrust Compliance Guidelines

I. Introduction

It is the policy of AHDI to comply fully with all applicable laws and regulations, including the antitrust laws. The federal and state antitrust laws are intended to insure that there be free and open competition throughout our market-based economy to the maximum extent possible. The antitrust laws therefore prohibit certain behavior that unreasonably restrains competition.

Violation of the federal antitrust laws is a felony subject to very large fines and, for individuals, jail sentences. In addition, persons who have been injured in their business or property as a result of a violation of the antitrust laws may recover three times the actual damages sustained plus attorneys' fees. The defense of an antitrust compliance investigation by a state or federal law enforcement agency can be time-consuming and costly, as can the defense of private treble-damage litigation. In light of these significant consequences of a violation of the antitrust laws, or even the appearance of a violation, it is important for AHDI's members and staff to be cautious in all matters raising antitrust law issues.

The antitrust laws are complex, and it is impossible in this brief outline to cover all of the business behavior they might prohibit. These guidelines are intended therefore only to alert AHDI's staff to those types of activities which are most likely to present antitrust law compliance concerns and to provide a framework to insure compliance with the law. Additional information is available from the Director staff and the Association's legal counsel.

II. Meeting Procedures

The following procedures should be followed in connection with all AHDI meetings:

1. There should be a written agenda, prepared in advance, for all AHDI governance meetings, including meetings of Board and staff committees and subcommittees. All agendas should be reviewed in advance of the meeting by AHDI staff and, if needed, by counsel. Whenever possible, the meeting should follow the approved agenda.

2. Minutes should be prepared which accurately and completely reflect the matters discussed and the action taken. Minutes should be reviewed by AHDI staff in draft form to ensure accuracy, readability, and consistency of format.
3. No “secret” meetings on substantive AHDI business should be held.
4. Members should avoid discussion of substantive business matters which fall within the scope of the subjects referred to in Parts III and IV of these Guidelines outside formal meetings, such as during breaks and social events.
5. Where practical, AHDI staff should be present at all meetings at which matters of substance will be discussed.

III. Subjects Which Should Not Be Discussed At Any AHDI Functions

Certain actions by competitors are clearly unlawful and condemned by the antitrust laws as per se offenses, because they are unjustifiable in any circumstances. In order to avoid any inference that AHDI has engaged in any such prohibited activity, the following subjects should not be discussed at all in connection with AHDI functions.

1. Prices and Related Subjects. Member or non-member competitors' prices or fees or any subject that relates to prices for specific services, or that can affect (raise, lower, or stabilize) prices – e.g., discounts, costs, salaries, compensation, terms and conditions of sale, warranties, or profit margins. A price-fixing violation may be inferred from price-related discussions followed by parallel decisions on pricing by Association members – even without an oral or written agreement on prices.
2. Agreements to Allocate Markets or Customers. Allocation, division, or "rationalization" of markets or customers geographically or in any other manner. These practices can be similar in effect to price fixing and are treated accordingly in the law.
3. Boycotts. Boycotts or agreements not to deal with certain competitors, customers, or suppliers. In some circumstances, agreements of this type among competitors can be per se unlawful.

If inappropriate comments on these subjects are made at an AHDI meeting, a staff member or counsel should advise the person raising the matter that the subject is out of order.

IV. Subjects Which Are Sensitive and Should Be Discussed Only After the Guidance of the Chief Executive Officer or Counsel

Several areas of legitimate concern which may be discussed by AHDI members nevertheless fall into an area of the antitrust law in which legality depends on all of the surrounding facts and circumstances. Accordingly, the subjects should be discussed only with the guidance of the Chief Executive Officer or counsel. These subjects include the following:

1. Standardization of practices.
3. Misconduct, expulsion, or sanctioning of members.

4. Whether to deal with particular types of products or companies.

Any AHDI staff or Board member who learns of such discussions at an AHDI function, including that of a component Association, is obligated to advise the Chief Executive Officer, who will evaluate the possible antitrust risk associated with such discussions (after consultation with counsel, if necessary) and take appropriate action.

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