

## **National Wooden Pallet & Container Association**

### **Statement of Compliance with the Antitrust Laws**

The business of the National Wooden Pallet and Container Association (NWPCA) is conducted at meetings held throughout the year. Because a trade association is a combination of competitors, all NWPCA meetings must be conducted so as to avoid the possibility, or even the appearance, of a violation of the antitrust laws of the United States.

The primary purpose of the antitrust laws of the United States (the Sherman Act, the Clayton Act, the Federal Trade Commission Act and the Robinson-Patman Act) is to protect competition. The Sherman Act makes illegal competitors' agreements, either formal or informal, which have the purpose or effect of unreasonably restricting competition. Fixing prices of competing products or dividing customers or territories with the objective or result of setting up an exclusive set of customers or territories with which no competitor can do business are examples of such restrictions. The Federal Trade Commission ("FTC") Act prohibits "unfair methods of competition" and "unfair or deceptive acts or practices." It renders anti-competitive actions of a single person or firm, whether or not there is an agreement among competitors, illegal. The Sherman Act contains severe criminal penalties for violations. It provides for substantial fines for corporations, individuals, and other organizations such as trade associations or for the greater of twice the defendants' gross gain or twice its victims' gross loss. The FTC enforces the provisions of its Act by issuing cease and desist orders. Penalties for individuals or organizations violating an FTC cease and desist order can include a significant daily fine lasting as long as the illegal activity continues.

Private parties may also file civil lawsuits that, if successful, award treble damages plus court costs and attorney's fees - all of which can be significant. The cost of defending an antitrust lawsuit can be substantial, even if the defense is ultimately successful.

Such serious potential consequences require that all of the meetings and activities of NWPCA are conducted in strict compliance with the requirements of the antitrust laws of the United States. To advance this requirement, these Guidelines are distributed at NWPCA meetings and NWPCA Staff is trained on these issues each year.

#### **Meetings**

In order to assure continued compliance with both the letter and the spirit of the antitrust laws, participants in NWPCA meetings are reminded of the following important NWPCA policy:

Although the antitrust laws do not preclude members of NWPCA from lawfully engaging in a great variety of collective activities, the antitrust laws do encompass certain conduct which is prohibited because it is unreasonable per se. The prime example is, of course, agreement with regard to price. Any conduct by competitors which has the purpose or effect of either raising, depressing, fixing, pegging, or stabilizing the price of a product or service is unlawful. Also, the antitrust laws likewise prohibit concerted action, which may affect a price, including matters relating to production, terms and conditions of sale, the distribution of a product or the division of markets.

Either an explicit or tacit understanding between competitors that could affect the price of products or operate to impede free and open competition is forbidden. In order to prove any such unlawful activity, it is not necessary that there be evidence of a formal agreement or understanding; more often than not, such proof is circumstantial and a violation of the antitrust laws may be found because of a course of dealing between competitors or between members and their customers.

With regard to any NWPCA meeting, there must never be any discussion among those attending, or any formal or informal agreement of any sort, with respect to the following:

- Any current or future price to be charged with respect to a product or service.
- Any allocation of markets or customers.
- Any coordination or cooperation with respect to bids or requests for bids.
- Terms or conditions of sale, including credit or discount terms.
- Distribution of products or services.
- Control of the production of any product or the level of production.
- Profit levels or profit margins.
- The basis for arriving at any price.
- The exchange of price information with respect to any specific customer.
- Any action which would unreasonably restrain trade.

An agenda of meeting topics is distributed in advance of each NWCPA meeting and permits preparation for the meeting.

Minutes are kept of all meetings and accurately report actions that are taken. The agenda and minutes are official records and are distributed within a reasonable time following each meeting.

### **Statistics**

Statistical reporting programs are generally lawful if the data is historic, provided in the aggregate and if data from a particular firm is not disclosed to competitors. Confidentiality is enforced in all aspects of these programs, and NWCPA's Staff never discloses statistics that could be revealing. Legal counsel approves all rules and guidelines of statistical programs, including amendments and changes.

### **NWPCA Staff**

The NWPCA staff is regularly advised and reminded of principles of antitrust law as they have evolved and may affect the pallet industry. The staff is alert to any discussion or topic which might result in a potential restraint of trade, and should any discussion arise at a meeting which might be construed as inappropriate, the staff has been instructed to alert those present that the particular topic under discussion should not be pursued further.