
Tribal Summit Group

Antitrust Policy Statement

Objective

The Tribal Summit Group (TSG) and its members are committed to full compliance with all laws and regulations, and to maintaining the highest ethical standards in the way we conduct our operations and activities. Our commitment includes strict compliance with all applicable federal antitrust laws, which are designed to protect this country's free competitive economy. To that end, this Antitrust Policy Statement ("Policy") is applicable to all TSG events, activities and programs. It is required to be read and followed by all members of the Association, the Association Staff, Board, Chairs and members of any TSG Committee.

Overview of Antitrust Laws

This Policy will familiarize you with a few of the basic principles of federal antitrust law, but it is not a complete or definitive statement. It really only scratches the surface covering some basic principles most likely affected by the activities of any trade association. Any specific questions related to antitrust compliance not addressed in this Policy should be forwarded to TSG's Executive Director for review by Association counsel or your company's legal counsel.

The antitrust laws of the United States are designed to promote vigorous and fair competition and to provide American consumers with the best combination of price and quality. The antitrust laws include provisions dealing with monopolization, price discriminations, and exclusive territories, among other things. This Policy is largely based on the requirements of Section 1 of the Sherman Act, which, generally speaking makes unlawful any agreement or understanding between competitors which unreasonably or unduly restrains competition. Because the TSG and other trade and professional associations are, by definition, combinations of competitors, one element of a possible antitrust violation is always present, and only some action by the association that unreasonably restrains trade needs to occur for there to be an antitrust violation. Consequently, associations are common targets of antitrust plaintiffs and prosecutors.

The consequences for violating the antitrust laws can be severe. A conviction can carry stiff fines for the association and its offending leaders, jail sentences for individuals who participated in the violation, and a court order dissolving the association or seriously curtailing its activities. The antitrust laws can be enforced against associations, association members, and the association's employees by both government agencies and private parties (such as competitors and consumers) through treble (triple) damage actions. As the principal federal antitrust law is a criminal conspiracy statute, a person who attends a meeting at which competitors engage in illegal discussions may be held criminally responsible, even if he or she says nothing at the meeting. The person's attendance at the meeting may be sufficient to imply acquiescence in the discussion, making him or her liable to as great a penalty as those who actively participated in the illegal agreement.

Potentially, any agreement between competitors could be subject to review under the

Sherman Act, but there is some conduct that is considered unlawful regardless of (a) the reasons why it is undertaken, (b) the revenues or assets of the parties involved in the conduct or (c) the justifications that can otherwise be made for the conduct. Examples of such "per se" or "hard core" unlawful activities include: (1) "price fixing" (either a resale price or a purchase price) with competitors, (2) allocating customers or markets and (3) certain group boycotts of customers. These "per se" violations are illegal ***regardless of the circumstances***.

Price Fixing. Any agreement among competitors to raise, lower, or stabilize prices is unlawful even if the price agreed upon is reasonable or beneficial to consumers and even if the agreement is never put into effect. "Price" is interpreted very broadly and includes other terms that affect prices, such as discount programs, promotions, terms of sale, agreed labor rates, as well as an agreement relating to the manner or how competitors price (such as a pricing formula or agreed margin), or an agreement to raise or lower prices by some unspecified amount. Antitrust violations can be based on circumstantial evidence and thus evidence of an explicit agreement is not needed. Therefore, comments that "signal" to competitors on these issues or that could otherwise result in exchanges of competitively sensitive information also must be avoided.

Market Division. Agreements among competitors to allocate divide or assign customers, territories, products or services are also per se illegal. Agreements between a manufacturer (supplier) and a dealer to limit that dealer to certain customers or a defined territory are treated differently under the antitrust laws; however, dealers cannot agree on allocations among themselves and have the manufacturer adopt them.

Boycotts. Agreements among competitors to boycott certain suppliers, customers or competitors are per se unlawful in some circumstances. In the trade association context, restrictions on membership and participation in shows or exhibitions, disciplinary proceedings and standard-setting activities generate most boycott issues. In particular, TSG members should not engage in any discussion about whether to refuse to do business with any other entity or whether to limit or terminate any existing relationship.

The exchange of competitively sensitive information among competitors can lead to price fixing and other antitrust violations. TSG members should not discuss any competitively sensitive information.

Guidelines on Preventing Problems at Meetings, in Records and in Contacts with Others

Meetings, communications and contacts that touch on antitrust matters present special challenges. A simple example will illustrate this. Suppose that competitors were to discuss their prices at a meeting or in a document, and that their prices increased shortly afterward. A jury might view this as evidence that their discussions led to an agreement on pricing, and thus violated the antitrust laws. In a case like that, the mere appearance of illegality – even when the parties may in fact have done nothing wrong – can cause serious problems. The guidelines that follow are designed to help to ensure compliance with the antitrust laws, but also avoid even the appearance of impropriety.

Subject Matter Restrictions

TSG members should avoid discussing certain subjects when they are together - both at

formal TSG membership, Board of Directors, committee, and other meetings and in informal contacts with other industry members. Specifically, members should avoid any discussion of the following subjects unless previously reviewed and approved by counsel:

- Do not discuss current or future prices (and exercise care in any discussion of historic prices), or planned or anticipated price movements or changes.
- Do not discuss current or planned profit margins, or what constitutes a "fair" profit level.
- Do not discuss increases or decreases in prices, pricing procedures or strategy, pricing formulas, or reference prices (*e.g.*, using one price as a take-off point for other prices).
- Avoid any discussion relating to any desire to directly or indirectly fix, peg, stabilize, raise, lower or affect prices on products.
- Do not exchange data concerning fees, prices, sales, costs, or other business practices unless the exchange is made pursuant to a well-considered plan that has been approved by TSG.
- Do not discuss any effort or plan by a member to restrict a competitor, to limit competition from another competitor, or to prevent someone from competing with another.
- Do not agree or discuss any attempt by a member to refrain from dealing with a supplier or vendor, or to limit a supplier from dealing with a competitor.
- Do not try to prevent a supplier from selling or doing business with a competitor(s).
- Do not discuss wholesale prices obtained by a supplier.
- Do not agree to any membership restrictions, standard-setting, certification, accreditation, or self-regulation programs without the restrictions or programs having been approved by TSG's legal counsel.
- Do report any violation of these Guidelines to TSG's Executive Director and to your counsel.
- Should reservations arise as to the propriety of remarks or discussion at a TSG meeting, state the reservations. If the discussion is not terminated or the question not resolved satisfactorily, the Chairman or WPMA staff person present should adjourn the meeting temporarily to request advice of legal counsel. If the issue is not resolved to the concerned member's satisfaction, that member should leave the meeting.
- Any rules or bylaws relating to membership restrictions, standard-setting, certification, accreditation, or self-regulation programs shall be approved by counsel before any action is taken.

Meetings

TSG meetings regularly bring together representatives of member companies that are potential or actual competitors. It is important, therefore, that certain ground rules be followed to eliminate any suspicion that a particular meeting might be used for anticompetitive purposes. TSG staff, officers, and member representatives, should follow the following guidelines:

- Do provide an agenda for any TSG sponsored meeting. The agenda should be circulated before the meeting. Meetings will follow the agenda. Off- agenda items should not be discussed.
- Ensure that all representatives of all members have received a copy of this Policy, and agree to comply with the Policy
- Provide a copy of this Policy to any third party speaking at any TSG meeting.
- Any member may have counsel attend a TSG meeting. TSG should invite counsel to attend if the meeting might involve matters having to do with sensitive antitrust subjects.
- Keep accurate minutes of all meetings.
- If a topic is raised which appears to involve a violation of the Policy, anyone in attendance has the right to interrupt and request the discussion be stopped. Those in charge of the meeting are responsible to see that the policy is enforced and that prohibited conduct is stopped. If prohibited conduct persists, the meeting will be cancelled and the matter referred to the Executive Director and/or legal counsel for further action.

We're Here to Help

Whenever you have any question about whether particular TSG activities might raise antitrust problems, contact the Executive Director at ExecutiveDirector@TribalSummitGroup.com or 1-877-460-5880.