

RADTECH INTERNATIONAL NORTH AMERICA (RadTech) ANTITRUST COMPLIANCE MANUAL

Participating in trade or professional associations can help a company to better compete and grow their business. However, because such activity involves contact among competitors of an industry, those who participate in them are vulnerable to violating the antitrust laws. The following compliance program addresses the specific activities of an association that may result in an antitrust violation and how we can avoid any problems. It is the responsibility of each RadTech member in the first instance to avoid raising improper subjects for discussion.

INTRODUCTION

This brief guide is intended as a checklist for use by officers, committee chairpersons, session moderators, speakers, and participants at all RadTech sponsored meetings. Copies of this guide are to be given to each RadTech member and attendee to ensure that proceedings do not stray into areas of antitrust sensitivity.

All such meetings, indeed, all RadTech activities, shall be carried out not only to the letter of the law but also in keeping with the spirit thereof. Responsibility for carrying out this policy resides in RadTech officers, meeting committee personnel, and any other person acting on behalf of RadTech.

THE ANTITRUST LAWS

The federal antitrust laws give the force of law to the philosophy underlying our economic system, namely, that a free market, wherein unfettered supply and demand determine the conditions of commerce, serves to achieve the most equitable allocation of goods and services at the lowest possible prices.

The two laws that have been invoked most frequently in investigations of possible antitrust violations in which associations have been involved are the Sherman Act and the Federal Trade Commission Act. The former declares unlawful "every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade," and the latter prohibits "unfair methods of competition in or affecting commerce."

GUIDELINES

The reminders about the antitrust laws that we announce at meetings from time to time are also useful to all of the staff of member companies.

Please note that it is a *per se* violation of the federal antitrust laws for competitors to agree on prices, allocation of customers, or allocation of territory. "*Per se*" means that no legal defense can be used to mitigate this automatic violation.

This means that at no time at any RadTech meeting may the group engage in discussions that could be construed as the beginning of a conspiracy among member companies to fix prices, allocate customers, or allocate territory; or to do any of the "don'ts", shown in the enclosed "Major Do's and Don'ts."

Even an agreement by competitors that is obviously well-intentioned or which satisfy a public interest objective is a violation of the antitrust laws if it could reduce competition.

Sometimes an enthusiastic person may make statements at a meeting that sounds as if they could be considered an implied violation of the antitrust laws. Should you ever face such a statement, immediately clarify the situation and reaffirm RadTech's guidelines for meeting discussions, citing the "Major Do's and Don'ts," and return to the topic on the agenda.

Some activities of an association fall within a "gray area" in relation to the antitrust laws, statistical reporting programs, industry standards, advertising campaigns, seals of approval or certification, codes of ethics and the like must all be carefully scrutinized to avoid antitrust violations.

All RadTech programs have been carefully reviewed by our Executive Director, Secretary and, where appropriate, referred to legal counsel to make certain they comply completely with antitrust laws. Our counsel is consulted regularly whenever questions arise in this area.

Effect of Antitrust Laws on Professional and Trade Associations

Professional and trade associations are subject to scrutiny under the many federal and state antitrust laws. One of the most powerful of these is the Sherman Act. Section 1 of that Act prohibits "contracts, combinations or conspiracies ... in restraint of trade." In cases not involving associations, it can be very difficult to demonstrate the essential element of "combination." But by its very nature, an association is a combination, such that there is no problem in proving that fact. This should serve as a signal to associations that they must proceed with extreme caution lest they be cited for antitrust infringements, carrying stiff fines and jail sentences.

Responsibility for enforcement of the antitrust laws lies with the Department of Justice, the Federal Trade Commission, and each of the fifty states which has enacted antitrust legislation.

The federal government can bring civil and criminal felony cases against associations, including members and staff. Penalties are severe. Each individual can be fined up to \$100,000 and each member corporation can be fined up to \$1,000,000. Individuals are subject to imprisonment of up to three years. In addition, the government can impose civil sanctions such as cease and desist orders which result in government restraints on the activities of association members. This, in turn, inhibits association functions and may culminate in the dissolution of an association.

In addition to lawsuits prosecuted by the government, civil treble damage suits can be brought by competitors and consumers. By way of illustration, the Sherman Act prohibits any price agreements regardless of purpose. Thus, if members of an association have an agreement which violates the law, even

if it benefits customers, members can be found liable for treble damages for injury resulting from the excess price charged.

From a practical standpoint, associations, including RadTech normally will need to focus on the following specific areas of antitrust compliance: price-fixing, division of customers, statistics programs, standardization and certification, and industry self regulation.

Price-Fixing

Association members are most likely to violate, and the government has evinced its greatest concern about the price-fixing prohibitions of the Sherman Act. A price-fixing violation can be inferred from the fact of similar price conduct by members, even though there is no written or oral agreement shown. If prices are fixed, it is no defense that the prices set are reasonable or that the ends sought are worthy.

Division of Customers

An agreement among members of an association to allocate customers is in and of itself a criminal act. The antitrust laws prohibit any understandings or agreements between competitors or members of an association that involve the division or allocation of customers. Even informal agreements whereby one member agrees to stay out of another member's territory will constitute a violation of the antitrust laws.

Standardization and Certification

An association that develops voluntary industry standards may face antitrust problems if the standard favors some and discriminates against others. Similarly, association certification activities which further the interests of certain groups to the exclusion of others may result in antitrust problems.

Industry Self-Regulation

Associations commonly establish codes of ethics for their members with procedures for enforcing them. It is laudable for an association to wish to promote high ethical standards, but antitrust problems may arise if an association's attempt to enforce its code of ethics causes economic injury.

Generally speaking, under the so-called Noerr-Pennington Doctrine, joint efforts by competitors and trade associations that are clearly aimed at influencing the government are immune from antitrust liability. This Doctrine derives from the First Amendment guarantee of free speech and the right to petition the government. Nevertheless, it is important to ensure that information provided to the government during the course of persuading an agency to take a particular action is accurate and reliable, not only to avoid losing Noerr-Pennington protection but also to enhance the credibility of the Association.

Whenever RadTech becomes involved in statistical reporting on items such as industry salaries or yearly production, it will clearly spell out its purposes and uses as designed to provide information to assist members in business decisions and not to restrict competition. Participation will always be voluntary, and the data developed will deal with past transactions and be reported in composite form. Surveys must be well-publicized, and open to both members and non-members. To avoid a cumbersome set of procedural controls and legal review governing distribution of survey results, RadTech will generally distribute statistical information to all requesting entities (unless a party has been given an opportunity to participate in the survey and refused).

Rules for RadTech Board Members and Officers

In order to insure that RadTech International North America adopts proper procedures minimizing the risk of investigations and unintentional law violations, RadTech has adopted the following procedures:

1. Agendas of all meetings of the Board of Directors and other meetings with potential antitrust significance must be kept, and where appropriate, reviewed by legal counsel.
2. All members of the Board of Directors shall receive a copy of the association's antitrust policy statement detailing what can and cannot be done at RadTech meetings.
3. The bylaws or written policy statements of RadTech shall contain a full description of the association's intentions to fully comply with the antitrust laws.
4. Legal counsel may be requested to be present at Board of Directors meetings and any other meetings where sensitive issues are being discussed.
5. Minutes of all meetings must be approved by the Executive Director and, where appropriate, reviewed by counsel. The minutes should include statements to show the interest of the Board of Directors in complying with antitrust laws.
6. All association meetings should be scheduled meetings. There should be no informal "after the meeting" meetings.
7. Experienced antitrust counsel should approve all new association programs and changes in existing programs that may have potential antitrust problems. Special attention should be given to statistical programs.
8. Any Board of Directors' action in rejecting a membership application shall be subject to review of counsel upon request of the Executive Director or a member of the Board before taking effect.
9. No association staff member should communicate with officials of the Federal Trade Commission or the Antitrust Division of the Department of Justice without advice of counsel.

- 10 Counsel should update RadTech on antitrust problems on a periodic basis and should formalize the association's antitrust compliance program.
11. RadTech should adopt a formal document disposal program.
12. All minutes of RadTech meetings should be accurate and the RadTech Secretary should not sign any minutes that have been "doctored," are incomplete, or where an antitrust question is presented are not approved by counsel.

The Sherman Act is a criminal conspiracy statute. If you, as a RadTech member or employee, sit in a room while members engage in an illegal discussion involving an antitrust violation such as price-fixing, you may be held criminally liable even though you say nothing during the discussion. Your attendance at such a meeting may be sufficient to find that you acquiesced in the discussion and are equally as liable as those who vocally agree to fix prices.

Rules for RadTech Members

The best way to avoid possible infringement of the antitrust laws is to institute a program of compliance. At RadTech gatherings, all association members should avoid discussion of certain sensitive subjects. Informal gatherings which follow association meetings are particularly looked upon with great suspicion by the government.

First, make no agreement in restraint of trade. Additionally, some topics should be scrupulously avoided in all meetings:

1. Do not discuss current or future prices; be very careful of discussions of past prices;
2. Do not discuss what is a fair profit level;
3. Do not discuss an increase or a decrease in price;
4. Do not discuss standardizing or stabilizing prices;
5. Do not discuss pricing procedures;
6. Do not discuss discounts;
7. Do not discuss credit terms;
8. Do not discuss controlling sales;
9. Do not discuss allocating markets;
10. Do not discuss cost information or productive capacity;
11. Do not complain to a competitor that its prices constitute unfair trade practices; and
12. Do not discuss refusing to deal with a company because of its pricing or distribution practices. Even group discussions focused on a particular supplier, customer, or competitor - particularly of a negative or critical nature - carry the potential of being misconstrued as a collective effort to exclude that party from some competitive benefits of the market. Association discussion should be more generic and focused on broader industry issues rather than on individual market participants.

With regard to antitrust risks present in membership and industry self-regulation, membership policies should avoid the following:

1. Restrictions on dealing with nonmembers;
2. Exclusions from membership, especially if there is a business advantage in being a member; and
3. Limitations on access to association information, unless the limitation is based upon protection of trade secrets.

Industry self-regulation and codes of ethics should avoid the following:

1. Requiring refusal to deal with any member violating the association's code of ethics;
2. Arbitrary enforcement of the code; or unreasonably severe penalties for violation of the code;
3. Limitations on access to association information, unless the limitation is based upon protection of trade secrets; and
4. Regulations or policies which have price fixing implications, or otherwise restrain competition, such as preventing the advertising of prices.

Informal Discussions

The informal discussions that often follow immediately after a meeting probably offer the greatest hazard of inadvertent violation, or potential violation of the antitrust laws.

To guard against this, all personnel involved in RadTech meetings must be thoroughly schooled as to prohibited activities. RadTech officers and directors especially, must be alert to guide discussions away from dangerous areas. In cases of uncertainty, RadTech policy is to err on the side of caution rather than to risk violation of the antitrust laws. The issue can always be raised again after clearance by counsel.

We should bear in mind that we are a potential target for government antitrust enforcers and private treble damage suits. By conducting our business openly and avoiding even the appearance that we are engaging in activity which might be seen to have an effect on prices or competition, we can protect ourselves from charges of antitrust violations.