

Antitrust Compliance Policy

International Association of Refrigerated Warehouses (IARW)

World Food Logistics Organization (WFLO)

International Institute of Ammonia Refrigeration (IIAR)

International Refrigerated Transportation Association (IRTA)

International Association for Cold Storage Construction (IACSC)

It is the policy of IARW, WFLO, IIAR, IRTA, and IACSC (the associations) to comply strictly with all federal and state antitrust laws and to require its staff and members to do so without exception in the discharge of any activity carried on by the associations or under the associations' names. No meeting may be held in the name or under the auspices of the associations without staff counsel present.

What Are the Antitrust Laws?

The antitrust laws are federal and state laws designed to preserve free and open competition in the marketplace. They require that businesses engage in vigorous competition and they prohibit activity among competitors that unreasonably lessens business rivalry. Antitrust laws might be more appropriately called "competition laws" or "maintenance of competition laws," as they are in some other countries. The Sherman Act, a federal statute, is the primary antitrust law applicable to trade associations like IARW, WFLO, IIAR, IRTA, and IACSC. Other important federal statutes are the Federal Trade Commission Act and the Clayton Act.

The Antitrust Laws and Trade Associations

The Sherman Act prohibits any agreement, contract, combination or conspiracy in restraint of trade. Because trade association like IARW, WFLO, IIAR, IRTA, and IACSC are a combination of competitors, anything done under the authority of the association in restraint of trade may violate the antitrust laws. For this reason, trade associations, their members and staffs have frequently been the subjects of legal action under the antitrust laws. The associations, their members and their staff, must be especially alert to the possibility of violating the antitrust laws.

Antitrust Penalties

It is important to recognize in this regard that severe civil and criminal penalties can--and frequently do--result from antitrust violations. The Sherman Act is a criminal statute. Violation of the Sherman Act is a felony under federal law. A person convicted of a Sherman Act violation can receive up to three years in prison and can be fined \$350,000 or more per violation. Individuals convicted of antitrust violations such as price fixing are routinely sentenced to jail. Corporations such as the associations and the businesses of its members can be fined \$10,000,000 or more per violation. Where a corporation is involved in an antitrust violation, the result is often jail sentences and personal fines for the responsible individuals and a major fine for the corporation. Additionally, persons or organizations who claim to be injured by a violation of federal antitrust law may bring a civil action to recover three times their actual damages and their attorney fees. Just the cost of defending an antitrust suit may run into the millions of dollars. Settlements and awards in these cases often run in the tens or hundreds of millions.

Breadth of the Antitrust Laws

Another reason for being sensitive to any potential violation of federal antitrust law is the vagueness of the law itself. Unlike other areas of federal law where there are detailed statutory and regulatory provisions, the antitrust laws are intentionally broad and vague. They were written to encompass all activity that wrongfully restrained

trade regardless of the means used to achieve the anti-competitive result. The vagueness and breadth of the law allow prosecutors to use it wherever the effect of the action in question is to eliminate independent business decision making and reduce competition. There is no way to achieve an anti-competitive result without running afoul of the antitrust laws, no matter how novel or subtle the methods chosen may be.

What Is an Agreement?

A good example of the flexibility of the antitrust laws is the meaning of "agreement, combination or conspiracy" as used in the Sherman Act. The courts have found illegal agreements under the two antitrust laws where there was no formal contract or even a verbal one. An agreement can be inferred where the facts indicate that the parties understood what they would do without any overt communication. As one court has said, "A knowing wink can mean more than words." Where persons act together toward a common goal, their concerted activity will be sufficient for a finding of an agreement, combination or conspiracy. This is especially true of trade associations, whose activities are generally the concerted action of the members. Even proposing an illegal agreement, such as an agreement to fix prices, can violate the law.

Basic Antitrust Considerations

The following is a basic discussion of the kinds of antitrust violations that are of primary concern to trade associations like IARW, WFLO, IIAR, IRTA, and IACSC. It is not possible to provide a complete explanation of every antitrust violation or to anticipate every situation in which a question might arise. For this reason, the associations' staff members are directed to bring any questions they may have to their supervisors. In cases where particular expertise is required, the associations' outside antitrust counsel will be consulted.

A. Price Fixing

Price fixing is the best known antitrust violation. Most persons familiar with business and trade association activities understand that when competitors agree with each other on the prices they will charge, they have violated the law. What is less commonly understood is that any discussion among competitors of prices or the elements of price, such as costs, discounts, credit terms or profit margins, may lead to the conclusion that price fixing has occurred.

It is not necessary that a specific price be agreed upon or discussed. Agreements that affect prices are every bit as illegal as agreements that actually set prices. The Supreme Court has said that price fixing occurs where the activity has the purpose and effect of "raising, depressing, fixing, pegging or stabilizing the price." Price fixing can occur where a range of prices or an ascending or descending scale of prices or a formula for prices is arrived at. Price fixing can occur where concerted activity affects price even though the degree of impact is not set or pegged in any way.

Agreements on elements of price such as discounts, kickbacks, rebates, credit terms, common list or book prices from which discounts are granted, and other terms of sale directly affecting price are illegal. Agreements on costs (including labor, salaries, equipment, overhead, etc.) and other matters that necessarily have an impact on price should be considered price fixing. Moreover, agreements between suppliers and customers concerning customers' resale prices should be considered price fixing. The mere discussion of these subjects at a trade association meeting may be interpreted as price fixing. Accordingly, the associations' staff should be particularly alert to discussions of any element of pricing in the associations' meetings and should terminate promptly any such discussion in accordance with the staff directives set forth below.

B. Boycotts

Boycotts are agreements between two or more firms to refrain from doing business with a third party or to do business with a third party only on certain terms and conditions. Two retailers may not combine, for example, to force their supplier not to sell to a third retailer in their market. Customers may not join forces to coerce their suppliers to deal with them on certain terms. Suppliers may not refuse on a concerted basis to deal with customers. Boycotts are no less serious than price fixing and may constitute per se violations of antitrust law. They can result in criminal prosecution and highly expensive civil litigation.

The prohibition against boycotts may preclude activities that seem beneficial and in accordance with longstanding business practice. Violations have been found, for example, where a trade association adopted a code of ethics to eliminate practices considered substandard or to attempt to rid an industry of price cutters or to attempt to prevent a new method of doing business that threatened the industry's primary position as the provider of the goods or service in question.

The antitrust laws require that the marketplace, as governed by the law of supply and demand and by existing commercial laws, be the exclusive judge of what business practices are acceptable and of who may enter the market as a provider of goods and services.

C. Market Allocation

Competitors may not agree among themselves to decide where they will do business or what products or services they will or will not sell. Competing firms may not agree to abide by production quotas, to deal only in particular products, to operate only in certain areas, or to deal only with certain customers or types of customers. Like price fixing and boycotts, market allocation is a per se violation of the Sherman Act and can result in severe criminal and civil penalties. There should be no discussion among competitors of where particular business firms currently or will in the future do business or of what products or services they will render.

D. Standard Setting

Trade associations may engage legally in setting product standards. Standardization can benefit consumers, but can also have a detrimental impact on competition and can, under certain circumstances, amount to a violation of federal antitrust law.

It is not possible in a short space to specify all of the dimensions that must be considered in the area of product standards. The associations' legal counsel should be consulted whenever standardization is undertaken. Counsel will consider the following principles in reviewing standard setting:

The benefit of the standard must outweigh any competitive harm that the standard might inflict. There must be a legitimate need for the standard and no anti-competitive purpose such as intent to eliminate a competing product from the market. The processes by which standards are created must be fair and open enough that all points of view can be made known. Any injury to competition must be the minimum necessary to accomplish the purpose of the standard.

The following guidelines should be followed in any exercise involving standardization:

1. Standard setting should involve a process whereby all points of view can be expressed and as many individual voices as reasonably possible may be heard in the decision-making process.
2. The process must be followed and not subverted by any firm or individual or combination of firms or individuals.
3. The standard itself must be intended to accomplish a legitimate purpose, such as safety or increased industrial efficiency. It must have a valid justification in fact and must impose the minimum harm to competition while still accomplishing the objective.
4. If a standard or the standard setting process fails to meet any of these guidelines, the fact that the standard is intended for adoption by a government agency will not preclude antitrust liability. The circumstances may permit somewhat more flexibility where a government agency is actually setting the standard, but these guidelines should be followed at all times unless the associations' management and its counsel approve an exception.

E. Other Areas of Concern to Trade Associations

There are several areas of legitimate trade association activity which require the guidance of antitrust counsel because they are potentially troublesome under the antitrust laws. These are practices or agreements which do

not necessarily constitute illegal restraints of trade because they do not unreasonably restrain competition under all circumstances.

The courts have held, however, that in some circumstances association action in these areas can result in an unreasonable restraint. Each of the following subjects requires careful consideration and should be reviewed with legal counsel prior to discussing them at an associations' meeting:

1. Standards for eligibility for membership in the associations.
2. Codes of ethics or other self-regulatory activities.
3. Product certification.
4. Cooperative research programs.
5. Statistical programs.

Directives to the Associations' Staff

In light of the importance of the antitrust laws and of the associations' policy of strict compliance with the law, the following directives are issued to assure that all activity carried on under the name of the associations continues to satisfy both the spirit and letter of the antitrust laws.

1. A member of the associations' staff must prepare the agenda and be aware of the discussions of all meetings of the associations' committees, subcommittees or other units.
2. There may be no informal or rump sessions of any of the associations' committees or subcommittees from which the associations' staff members are excluded.
3. There may be no discussion whatever at any of the associations' meetings that may fall within the area of price fixing, boycotts or market allocation. There may be no discussion at any of the associations' meetings, without the prior approval of the President and CEO, of: standards for eligibility for membership in the associations, codes of ethics or other self-regulatory activities, certification or standardization programs, cooperative research programs, or statistical programs.
4. Should any discussion take place at any of the associations' meetings which violates or may violate the foregoing provision, the associations' staff member or members present must terminate the discussion immediately. In the event the discussion is not terminated, the staff member or members present must announce that the meeting is terminated and leave the meeting forthwith. Any such action must be noted in the minutes of the meeting and must be brought immediately to the attention of the President and CEO.
5. Minutes must be kept of every one of the associations' meetings, including minutes of meetings of committees, subcommittees or other units.
6. Any violations of any of these provisions must be brought immediately to the attention of the President and CEO.
7. No associations' staff member will be reprimanded or otherwise disciplined or impeded in his or her normal career progression for raising an antitrust concern or for terminating a meeting even where it is concluded in retrospect that the objection or termination was not necessary.
8. Any knowing or intentional violation of the antitrust laws or of these directives by an associations' staff member will result in immediate dismissal from the associations.

Revised: 16 July 2010