



Automotive Aftermarket Suppliers Association

ANTITRUST GUIDELINES

Application of Antitrust Laws to Association Activities

Trade associations and members are subject to federal and state antitrust laws. Associations are particularly vulnerable to antitrust enforcement, because an association is a group of competitors joined together for a common business purpose. Therefore, associations must proceed with caution in certain areas of activity to ensure against violation of antitrust laws.

The Sherman Act and The Federal Trade Commission Act

The most important antitrust statutes relating to association activities are Section 1 of the Sherman Act and Section 5 of the Federal Trade Commission Act. Section 1 of the Sherman Act prohibits “contracts, combinations, or conspiracies...in restraint of trade.”

Among other things, the Sherman Act prohibits any understanding affecting the price of a product regardless of the purpose of the understanding. For example, if members of an association reach any form of an understanding or agreement concerning price, members cannot justify the understanding by showing benefit to consumers. The same is true regarding allocation of markets or customers.

Section 5 of the Federal Trade Commission Act prohibits “unfair methods of competition in or affecting commerce.” Unlike Section 1 of the Sherman Act, the Federal Trade Commission Act reaches anti-competitive acts committed by single persons or companies, whether or not there is any agreement or “combination;” like the Sherman Act, it also covers joint actions.

Antitrust Problem Areas of Association Activity

AASA focuses on four principal antitrust areas:

A. Price-Fixing

Experience shows association members are most likely to violate, and the government is most likely to strictly enforce, price-fixing prohibitions of the Sherman Act. A price-fixing violation may be inferred from similar price behavior by members, even in the absence of a written or oral agreement. If price-fixing is established, the association and members may not raise the defense that the prices set are reasonable or that ends sought through price-fixing behavior are worthy.

B. Agreement to Divide Customers

Antitrust laws expressly prohibit any understanding or agreement between competitors involving division or allocation of customers. Even an informal agreement whereby one member agrees to stay out of another’s territory will constitute a violation of antitrust laws.

C. Membership Restrictions

While applicants for membership in a trade association may be rejected because they do not meet the membership qualifications, or for other valid reasons such as poor credit or misrepresentations in their membership application, the denial of membership to an applicant may constitute a restraint of trade if undertaken for competitive reasons, or to hinder the applicant's ability to compete in the marketplace.

D. Standardization and Certification

An association that develops voluntary industry standards may face antitrust problems if a standard favors some competitors and discriminates against others without adequate technical justification. Similarly, association certification activities, which further the interests of certain groups of members, to the exclusion of others, may result in antitrust problems.

How to Avoid Antitrust Problems

A. AASA Procedures

AASA is careful to follow rules to ensure against unintentional violations of antitrust laws. In addition to this formal policy, AASA legal counsel approves new association programs or changes in existing programs that may have potential antitrust implications. AASA meetings are regularly scheduled and members never hold rump sessions. The minutes of all meetings are approved by legal counsel. The minutes reflect AASA policy of complying with antitrust laws.

B. Topics of Discussion That Must Be Avoided at AASA Meetings

Unless discussion is approved by legal counsel, or discussion is in the context of legislative or legal activity, the following topics should not be discussed at AASA meetings:

1. Current or future prices. Care must be taken in discussing past prices, although statistical reporting may be appropriate.
2. What constitutes a "fair" profit.
3. Possible increases or decreases in prices.
4. Standardization or stabilization of prices.
5. Pricing procedures.
6. Cash discounts.
7. Credit terms.
8. Selection system or termination of purchasers, customers or suppliers.
9. Allocation of markets.
10. Complaints to a competitor that its prices constitute unfair trade practices.
11. Refusal to deal with a corporation because of pricing or distribution practices.
12. Whether or not pricing practices of any industry member are unethical or constitute an unfair trade practice.
13. Any matter inconsistent with the exercise of independent business judgment.

What to Do if You Think There is a Problem

If a member is concerned about an antitrust issue with an AASA program or discussion, do not participate in the activity, and immediately notify the AASA President and COO and/or Arent Fox at 202-857-6053.

*Prepared by Arent Fox for AASA –
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