Antitrust Compliance

A model policy guide for members of the association

**Antitrust and NPRRA**
Cases involving antitrust violations had a common theme in the past: the federal government prosecuted monster-size corporations for attempting to monopolize an industry.

However, the theme in recent years remotely resembles that of the past. Government antitrust actions have become narrower in focus, more selective, and are being prosecuted vigorously. In addition, cases filed by private parties now outnumber government cases by a factor of ten.

**How does this affect NPRRA and its members?**
One result of the government's change in focus is that activities of professional and trade associations are being scrutinized under an antitrust microscope.

Members should know what activities constitute potential antitrust violations and what steps should be taken to prevent violations.

Contained here is an overview of antitrust regulations and a model antitrust compliance policy for NPRRA that members may use to develop their own policy.

**NPRRA Antitrust Compliance**
Eliot G. Disner, a leading U.S. antitrust attorney, says in his book Antitrust for Business, “... trade associations are the estuaries of per se violations.”

The likelihood of a trade association being named as a party in an antitrust violation is greatly increased by the absence of a written antitrust compliance policy, the lack of legal review of association policies, and the absence of legal counsel at association meetings and association sponsored events.

**As a result, the NPRRA should adopt the following resolution:**
The NPRRA and its members pledge to strictly comply with the letter and spirit of the antitrust laws.

Members will not participate in or condone any activity that could be interpreted as a violation of antitrust laws.

Specifically, members will not, as individuals or as a group, participate in the following violations:

- Discuss prices or pricing policy with, or in the presence of, a direct competitor.
- Accept or solicit a price list or written information on prices or pricing directly from a competitor (except where members are purchasing services of other companies).
- Agree to divide or allocate territories or customers with a customer.
- Agree to standardize, limit or restrict a product or service with a competitor.
- Attempt to coerce a distributor to maintain certain resale prices.
- Agree to boycott or refuse to deal with certain customer(s).
Members will avoid the following actions which are potential antitrust violations: tying arrangements, coerced exclusivity, reciprocity or discriminatory pricing deals, or any agreement that the member believes will restrain competition.

The NPRRA will also consult with legal counsel in assuring that meeting agendas, association policies and association events comply with the letter and spirit of antitrust laws.

**Antitrust Laws**

**The Sherman Antitrust Act**

The Sherman Antitrust Act stands as the backbone to antitrust enforcement. The intent of the Act is to promote the development of the enterprise by assuring competition and protecting the consumer.

The Act makes the following actions per se illegal; in other words, illegal without regard to circumstance:

- **Price Fixing** - Any agreement concerning price by two or more parties who are competitors of the same product or service. This includes both maximum or minimum pricing.
- **Resale Price Maintenance** - Any attempt for a supplier to coerce a distributor into maintaining price or price-related terms after the supplier-distributor relationship has been established using the threat of termination of supply.
- **Division of Markets** - Any agreement between competitors to divide markets or customers in any way.
- **Boycotts** - Any agreement between competitors to refuse to do business with a distributor or customer.

The following situations are defined as potential per se antitrust violations, depending on the circumstances:

- **Tying** - Any agreement that requires a customer to purchase one product only on the condition that a second product is purchased.
- **Reciprocity** - Any agreement that requires a customer to purchase goods from the seller in order for the seller to purchase the goods from the customer.
- **Refusal to Deal** - Any agreement between suppliers of a customer not to do business with a customer.
- **Rule of Reason** - If an agreement appears to restrain competition but does not fit into one of the above categories, the courts will apply the "Rule of Reason" to determine if the agreement violates antitrust law. This standard states that a restraint is unlawful if it is anticompetitive in nature, purpose or effect.

These standards are not a comprehensive list of antitrust violations covered by the Act. The attempt to monopolize, discriminatory pricing actions, mergers and joint ventures are some of the other antitrust violations that are covered in the Robinson-Patman Act, the Federal Trade Commission Act, as well as state level versions of the Sherman Act.

Criminal and civil penalties for an antitrust conviction may include up to three years in prison, corporate fines up to $10,000,000, individual fines up to $350,000 or twice the pecuniary loss of the victim or twice the pecuniary gain of the defendant, court costs and attorneys fees. The FTC also may fine offenders $10,000 per offense.

The U.S. Justice Department, the U.S. Attorney General, the Federal Trade Commission and corresponding state officials are vested with the authority to enforce antitrust laws.

If any situation arises that is a possible antitrust violation, the best advice is to make it known that you are removing yourself from the situation and consult legal counsel immediately.