

CMAA ANTITRUST GUIDELINES

A number of association policies or programs that might be discussed at association meetings raise issues of antitrust and trade regulation. These areas include membership restrictions, categories, and termination; membership services to nonmembers; trade show restrictions; business or professional codes; statistical programs; price activities; cost programs; standardization and simplification; professional restrictions and credentialing; joint research; credit reporting; group buying and selling; and others.

DISCUSSIONS AT MEETINGS

Discussions at CMAA meetings often cover a broad range of issues pertinent to the Club industry:

- Participants at CMAA meetings, whether they be meetings of the membership, the governing board, officers, committees, or subcommittees, must be aware that discussions of certain subjects raise grave antitrust dangers and therefore must be avoided.
- The following topics of discussion must be avoided at CMAA meetings:
 - Current or future prices (great care must be taken in discussing past prices)
 - What constitutes a fair profit or margin level
 - Possible increases or decreases in prices
 - Standardization or stabilization of prices
 - Pricing procedures
 - Cash discounts
 - Credit terms
 - Control of sales
 - Allocation of markets
 - Refusal to deal with a firm because of its pricing or distribution practices
 - Whether or not the pricing practices of any industry member are unethical or constitute an unfair trade practice
- The following topics of discussion can be appropriate at CMAA meetings:
 - Reporting on general industry or profession economic trends

- Describing advances or problems in relevant technology or research
 - Demonstrating methods by which an individual or Club can become more profitable by acquiring better knowledge of its own costs
 - Summarizing effective methods of purchasing and marketing
 - Educating about various aspects of the science and art of management
 - Considering industry or profession relations with local, state, or federal governments
 - Reporting on experiences and developments in employment relations
 - Relating efforts toward improvement of services
 - Developing ways to respond to consumer or environmental issues
 - Effecting energy use and supply
- Associations should seek expert advice on the appropriateness of meeting discussions whenever questions are raised. Some associations have counsel attend all meetings of the governing boards or other bodies at which improper or illegal subjects could arise. Other associations have counsel review agendas and minutes for meetings. At the very least, counsel should be available to guide and assist associations on what are appropriate and inappropriate subjects for discussions at meetings.

MEMBERSHIP RESTRICTIONS

- There can be serious legal problems for an association that unreasonably restricts membership. Associations (and their chapters or grassroots organizations) exist to provide information and services that enable members to do business more successfully.
 - Association membership is ordinarily a privilege that may be granted or denied if done so on reasonable grounds, but association membership may sometimes become a right when denial of it would result in a serious economic disadvantage.
 - Members derive commercial and professional benefits from associations. To restrict from membership on who is part of the field represented by the association may deprive the excluded person of the ability to compete on an equal basis with association members and, thus, may violate antitrust laws.
 - The greater the competitive advantage derived from association membership, the more likely it is that exclusion of a competitor from membership will be considered an unreasonable restraint of trade in violation of antitrust laws.
 - Associations ordinarily may restrict membership to persons engaged in the same field.

- Associations ordinarily may restrict membership to those engaged in a trade or business within some recognized geographic boundaries.
- Associations ordinarily may restrict membership to those willing to adhere to a reasonable code of business or professional conduct and to those demonstrably able to promptly pay dues.
- Restrictions on association membership because of race, religion, or sex ordinarily are not permissible and could be struck down on the bases of common law or discrimination law criteria. The same is true of restrictions based merely on unpopular business or professional views or practices of applicants (e.g., price discounting).
- Restrictive membership rules “must be shown to be justified by the legitimate competitive needs of the association.”
- Subjective membership criteria are generally not narrowly tailored to accomplish any legitimate goal of an association.
- Membership rules may not seek to intentionally exclude competitors from access to the competitively significant benefits of membership. To do so is *per se* unlawful.
- Membership fees charged to new members that are excessive and do not represent a fair share of costs may unreasonably exclude competition without furthering a competitive need of the association.

STATISTICAL PROGRAMS/SURVEYS

- Every organization can benefit from access to statistical data on sales, dues, costs, labor rates, and other economic and business factors about its industry. Statistical programs are designed to survey and report on business conditions and provide the means for measuring one’s own performance against the norms of competitors in an industry. For many, statistical reports issued by their association are considered indispensable tools for maximizing productivity, efficiency, and profitability.
 - Participation in the statistical program must be voluntary. No direct or indirect coercion should be applied to force, require, or intimidate association members or nonmembers to participate.
 - The purpose of the program should be promulgated and understood by all as the collection and furnishing of specific useful business or professional information rather than the effecting of any agreement or understanding with respect to business or professional activities.
 - Information received and published should be historical rather than projected. Only past data or completed transactions should be used. The less current the

information, the less likely it can be used as the basis for an illegal agreement or understanding.

- The confidentiality of information supplied by each participant must be maintained. Only composite or average figures should be used in statistical reports. No average or composite should be used where less than three or four individual component figures are available lest one participant be able to extrapolate information on the other or others.
- Data supplied by individual participants should not be shown to any other participants for any reason.
- Published association statistical reports should not contain comments on the information contained in the reports that could in any way interpreted as an exhortation to participants that they take some joint or concerted action in response to the information.
- Results of association statistical programs must be available to nonmembers, including customers and suppliers of members, whenever they have legitimate need to receive the results and access may fairly be regarded as essential, or at least very important, for them to compete in an industry. Nonmembers can be charged higher prices than those charged to members to reflect association membership funds that contributed to financing, or subsidizing, the statistical programs. The nonmember prices should not be so high that they are tantamount to compelling membership. Results of association statistical programs can be denied to members and nonmembers who are eligible to participate in the programs, but chose not to.
- Unless retention of the information is considered particularly important for some purposes, individual submissions by participants in association statistical programs should be turned or discarded as soon as they have been used to make composite or average computations to avoid release in some subsequent government or private investigation or suit of data that participants may consider confidential.
- Statistical programs ordinarily should not include price or fee information except under compelling circumstances. Price and fee reporting may be undertaken under strict rules, but it must be understood that no legal safeguards can absolutely protect association-published price and fee information from being used for illegal purposes.