

Circular Drive Initiative

ANTITRUST COMPLIANCE POLICY

The antitrust laws of the United States and the various states prohibit agreements, combinations and conspiracies in restraint of trade. Because the Circular Drive Initiative (“CDI”) and other trade and professional associations are, by definition, combinations of competitors, one element of a possible antitrust violation is generally present, and only some action by the association that unreasonably restrains trade generally needs to occur for there to be an antitrust violation. Consequently, associations are common targets of antitrust plaintiffs and prosecutors.

The consequences for violating the antitrust laws can be severe. A conviction can carry stiff fines for the association and its offending leaders, jail sentences for individuals who participated in the violation, and a court order dissolving the association or seriously curtailing its activities. The antitrust laws can be enforced against associations, association members, and the association's employees by both government agencies and private parties (such as competitors and consumers) through treble (triple)-damage actions. As the principal federal antitrust law is a criminal conspiracy statute, an executive who attends a meeting at which competitors engage in illegal discussions may be held criminally responsible, even if he or she says nothing at the meeting. The executive's attendance at the meeting may be sufficient to imply acquiescence in the discussion, making him or her liable to as great a penalty as those who actively participated in the illegal agreement.

The antitrust laws prohibit competitors from engaging in actions that could result in an unreasonable restraint of trade. Above all else, CDI members should be free to make business decisions based on the dictates of the market – not the dictates of CDI.

Some activities by competitors are deemed so pernicious and harmful that they are considered *per se* violations – it does not matter whether or not the activities *actually* have a harmful effect on competition; the effect is presumed. These generally include price fixing, allocation of customers, markets or territories, bid-rigging, and some forms of boycotts. In addition, there are many features that factor into price; agreements as to factors that can directly impact price also are proscribed.

Other actions such as standard-setting, certification programs, and relationships between distributors and suppliers generally are evaluated under a rule of reason – there is a balancing between the pro-competitive and anti-competitive aspects of the activities; the pro-competitive effects must outweigh the anti-competitive ones. These areas also should be approached with caution and legal guidance.

CDI has a policy of strict compliance with federal and state antitrust laws. CDI members should avoid discussing certain subjects when they are together or are otherwise interacting – at formal CDI membership, Board of Directors, committee, and other meetings, through telephone calls, emails and online forums, and in informal contacts with other industry members – and should otherwise adhere strictly to the following guidelines:

- DO NOT discuss prices, fees or rates, pricing policies, or features that can impact (raise, lower or stabilize) prices such as discounts, costs, salaries, terms and conditions of sale, warranties, or profit margins. CDI members cannot come to understandings, make agreements, or otherwise concur on positions or activities that in any way tend to raise, lower or stabilize prices or fees. There can be *no* discussion as to what constitutes a reasonable, fair or appropriate price or fee to charge for any

service or product. Note that a price-fixing violation may be inferred from price-related discussions followed by parallel decisions on pricing by association members — even in the absence of an oral or written agreement.

- DO NOT exchange data concerning fees, prices, production, sales, bids, costs, salaries, customer credit, or other business practices unless the exchange is made pursuant to a well-considered plan approved by CDI's legal counsel. Information may be presented with regard to historical pricing activities so long as such information is general in nature, participants' data is aggregated, and no data is included on current or future prices or fees being charged. Any discussion of current or future prices, fees, discounting and other terms and conditions of sale – which may lead to an agreement or consensus on prices or fees to be charged – is strictly prohibited.
- DO NOT agree with competitors as to uniform terms of sale, warranties or contract provisions.
- DO NOT discuss actions that are intended to discourage competition or innovation among CDI members.
- DO NOT agree with competitors to divide up or allocate customers, markets or territories.
- DO NOT agree with competitors not to deal with certain suppliers or others.
- DO NOT try to prevent a supplier from selling to your competitor(s).
- DO NOT discuss your customers with your competitors.
- DO NOT resolve problems particular to a single CDI member or a small, select group of members with the intent of diminishing competition.
- DO NOT coerce CDI members to implement particular programs or policies.
- DO NOT agree to any association membership, exhibitor, advertiser or other restrictions, standard-setting, certification, accreditation, or self-regulation programs without the restrictions or programs having been approved by CDI's legal counsel.
- DO insist that CDI meetings (both in person and via audio- or videoconference) have agendas circulated in advance and that all meeting minutes properly reflect the actions taken at the meeting.
- DO leave any meeting or gathering (formal or informal) where improper subjects are being discussed, and tell everyone why you are leaving.
- DO ensure that only CDI staff sends out all written correspondence on behalf of CDI and that CDI officers, directors, committee members, or other members do not hold themselves out as speaking or acting with the authority of CDI when they do not, in fact, have such authority.

Any questions about CDI's antitrust policy should be directed to CDI's President and/or outside counsel.