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To: Membership and Potential Members

From: L.T. Guttadauro - Executive Association Director

Subject: Association Practices and Programs

Members and potential members who wish to participate in FOA activities must read, understand and abide by the following antitrust guidelines.

Association Practices and Programs

Pricing Activities

- Any discussion of prices is highly dangerous and should be avoided entirely; this includes references to prices in general, as well as-specific pricing matters.

Price Reporting Guidelines

- An association may conduct a program in which information about past prices is compiled and disseminated to its membership. But the legal line is fine and the advice of legal counsel should be sought before any such program is established and conducted by an association.

Exchange of Price Information

- Some associations conduct programs under which members' published price lists are exchanged through the association. Although such programs are not illegal in and of themselves, they are often dangerous because of the inferences that can be drawn from them.

Membership

Membership Qualifications:

- Membership requirements should not be arbitrary and no bona fide competitor should be excluded.

- The requirements should be reasonable, consistent with the stated purposes and objectives of the association, and applied without discrimination.

Reasonable Membership Requirements

Expelling a Member

- Fairness and uniformity are important. The grounds for termination must be reasonable and the procedures used must assure fair treatment of the expelled members.

Providing Non-Member Services

- Association services should be made available to competitors who are not members.
- Non-members should be charged a pro-rata share of the program's cost.

Statistical Programs

- The Supreme Court recognized early the importance to business and the public of such statistical programs and sanctioned them as legitimate functions of trade associations, provided, of course, the programs stayed clear of price-fixing and other violations.

Guidelines

- Clearly spell out the purposes and possible uses of the statistical program.
- Participation in the program should be voluntary.
- Non-members of the association should be permitted to participate in the program, although they may be charged a reasonable fee for such participation.
- In general, the information should deal only with past transactions and it should be in composite form so as not to disclose specific prices or identify specific companies.
- Statistical information should not be discussed at association meetings, except in a general way.

Cost Studies

- Cost studies that do not lead to price-fixing, rising, or stabilizing agreements are permitted under the antitrust laws.

Product Standards

- Standardization can be dangerous as it may violate the antitrust laws, if its purpose is to suppress or eliminate competition.

Who Writes Standards?

- Private Industry
- Private Firms, e.g., Under-writer's Laboratory Associations, United States Government

Certification

- In trade association certification programs, standards are set, products are tested, and if they comply with the standards, they are given a certification seal or grade mark.

Product Liability and Antitrust Problems

- Associations, which certify that a product meets certain tests, may, under some circumstances, be held liable for damages if the product fails to perform as certified.
- Antitrust problems have arisen most often when certification programs have been found to discriminate against non-participants or when they have resulted in the exclusion of non-certified goods from the market.

Industry Self Regulation

- Although the reasons for self-regulation programs vary, the goal of most is to eliminate certain objectionable practices which may violate the law, such as fraud, or which the association's members feel are morally objectionable.
- Self-regulation programs should be based on clearly defined standards that plainly indicate what is considered proper and improper. The standards should be reasonably related to the legitimate purpose for which the self-regulation program exists.

Industrial Research

- Cooperative industrial research is often the best method for business to find ways to improve production and products to solve common problems. The legal question in every instance, however, is whether or not the collective arrangement constitutes an agreement that unreasonably restrains competition.

Credit Reporting

- To help members evaluate customer credit risks, associations exchange credit information about customers.
- Credit reporting is a lawful association activity, but it can raise problems under the antitrust and libel laws and, in the case of consumer credit information, under the Fair Credit Reporting Act.
- From an antitrust standpoint there are two potential problem areas: one is that the credit program will result in a boycott or other concerted refusal by association members to deal with delinquent customers; the other is that the members will enter into some agreement about the credit terms they will extend to delinquent customers.

Cooperative Selling and buying

- When competitors agree among themselves to market their products collectively, antitrust problems arise.
- Most firms enter into cooperative buying arrangements because they wish to obtain quantity discounts offered by some sellers.

Lobbying Activities

- Concerted efforts to influence governmental action in restraint of trade by means of traditional lobbying techniques are immune from the antitrust laws, regardless of their anticompetitive purpose.