



## Antitrust Policy Statement

The National Trailer Dealers Association (NTDA), a trade association of trailer and equipment dealers and manufacturers, recognizes and endorses the policies underlying the nation's antitrust laws. It is the belief of the NTDA that competition is the fairest and most efficient mechanism of economic regulation. Accordingly, any activity that intentionally or unintentionally reduces competition or restrains trade is contrary to that belief and NTDA policy. To ensure that NTDA members, directors and staff understand and comply with basic antitrust law and NTDA policy, the NTDA Board of Directors has adopted the following Antitrust Policy Statement.

### I. Background

#### A. *Application of Antitrust Laws to Trade Association Activities*

Trade associations are subject to both federal and state antitrust laws. The most important antitrust statutes relating to an association's 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." Since trade associations are by definition "combinations," they may be particularly vulnerable.

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, they cannot justify the understanding by showing that it will benefit consumers.

An association's members and staff must also remember that the Sherman Act is a criminal conspiracy statute. If you are not an active participant — if you merely sit by at a meeting while the members of the association engage in an illegal discussion concerning price-fixing, you may be held criminally responsible, even though you said nothing during the discussion. Mere attendance at such a meeting may be sufficient to imply acquiescence in the discussion and thereby make the individual liable to as great a penalty as those who actively agreed to fix prices. Other common violations of the Sherman Act are boycotts or agreements to allocate markets.

**Section 5** of the Federal Trade Commission Act prohibits "unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce." Unlike the Sherman Act, the Federal Trade Commission Act reaches anticompetitive 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. The FTC has broad power to determine what constitutes an unfair method of competition or unfair or deceptive act or practice under any given circumstances.

#### B. Penalties for Violation of the Antitrust Laws

Violations include fixing prices, rigging contract bids, and allocating consumers between businesses that should be competing for them. Such violations constitute felonies.

Federal antitrust laws may be enforced against associations (and their members and staff) both by government officials and by private parties through treble damage actions. In both cases, penalties are severe. An individual convicted of a criminal violation of the Sherman Act may be fined as much as \$350,000 and imprisoned for up to three years. A corporation convicted of such a criminal offense may be fined as much as \$10 million.

Violation of the Federal Trade Commission Act can result in issuance of a cease and desist order, which



can place extensive governmental restraints on the activities of an association and its members or call for dissolution of the trade association itself. Failure to obey such an order can result in penalties of as much as \$16,000 per day per violation.

In addition to governmental prosecution for a criminal or civil violation, an association can face private action for treble damages brought by competitors or consumers. A finding of violation of an antitrust law in such a private action will result in payment by the convicted party of treble damages to the injured plaintiff.

### **Enforcement of Antitrust Laws**

Civil cases involving violations of the Clayton Act can be filed by state attorney generals or as class action lawsuits by groups or individuals with similar claims. Private individuals who have been harmed by Clayton Act violations may be eligible to receive an amount triple their actual losses in addition to winning compensation for court and attorney fees.

## **C. Potential Antitrust Problem Areas for Trade Associations**

From a practical standpoint, an association's members should focus their concern on five principal anti trust problem areas:

1. **Price-Fixing**  
Experience shows that an association's members are most likely to violate, and the government is most likely to enforce strictly, the price-fixing prohibitions of the Sherman Act. A price-fixing violation may be inferred from similar price behavior by an association's members, even in the absence of a written or oral agreement. If price-fixing by an association or its members is established, the fact that the prices set are reasonable or that the ends sought through the price-fixing behavior are worthy will not be an adequate defense.
2. **Agreement to Divide Customers**  
An agreement among members of an association to divide customers is, in and of itself, a criminal act. The antitrust laws expressly prohibit any understanding or agreement between competitors or members of an association 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 the antitrust laws.
3. **Membership Restrictions**  
Assuming members of an association derive an economic benefit from membership, the denial of membership to an applicant may constitute a restraint of trade because such a denial may limit the ability of the applicant to compete. Similarly, no member of a trade association can be forced to participate in discussions or to attend association meetings.
4. **Standardization and Certification**  
An association that develops voluntary industry standards may face antitrust problems if such a standard favors some competitors and discriminates against others. Similarly, the certification activities of an association that further the interests of certain groups of members, to the exclusion of others, may result in antitrust problems.
5. **Industry Self-Regulation**  
Associations commonly establish codes of ethics for their members, including procedures for enforcement of such codes. An association must guard against any efforts to enforce such codes of ethics if such enforcement would result in economic injury to certain members.

## **II. National Trailer Dealers Association Antitrust Policy and Guidelines**

It is the policy of the NTDA that no member, director or staff member shall intentionally or unintentionally:

- fix or stabilize prices
- limit production
- hinder nonmembers
- coerce members
- initiate boycotts

- allocate markets
- influence current or future prices or otherwise act in restraint of trade or engage in anticompetitive conduct.

To ensure that the above policy will be fully implemented, the NTDA Board of Directors has adopted the following preventive guidelines and rules:

#### **A. General Operating Procedures**

1. A full description of the NTDA's intention to comply fully with the antitrust laws should be included in its bylaws and written policy statement.
2. All NTDA members, directors, committees and staff shall receive and familiarize themselves with the NTDA's Antitrust Policy Statement.
3. The NTDA's legal counsel shall periodically update members, directors and staff concerning antitrust problems.
4. The NTDA's legal counsel shall approve in advance all new NTDA programs or changes in existing programs that may have potential antitrust implications.
5. If possible, all NTDA meetings shall be regularly scheduled and conducted pursuant to the agenda and explicit procedural rules. In no case shall members hold informal "rump" meetings.
6. An agenda shall be prepared in advance for each meeting of the NTDA, and the agenda shall be reviewed when practicable by legal counsel.
7. If possible, legal counsel shall be present at all meetings of the Board of Directors and at any other meeting at which sensitive issues will be discussed.
8. If practicable, the minutes of all meetings shall be approved by legal counsel. The minutes should reflect the NTDA's policy of complying with antitrust laws.
9. The minutes of all NTDA meetings should be accurate, and the Association executive should never sign minutes that have been doctored, or that are incomplete.
10. Any action by the NTDA or its Board of Directors which has the effect of rejecting a membership application should not become final without approval by legal counsel.
11. The NTDA shall develop a formal document disposal program.
12. No NTDA director, officer or staff member shall have authority to communicate with officials of the Federal Trade Commission or the Antitrust Division of the Department of Justice without prior approval of the Association's legal counsel.

#### **B. Membership Policy**

The NTDA shall not:

1. Exclude certain competitors from membership in the NTDA, especially if there is an arguable business advantage in being a member.
2. Restrict NTDA members from dealing with nonmembers.
3. Limit access to information developed by the NTDA, unless such limitation is firmly grounded upon the need to protect trade secrets.

#### **C. Topics of Discussion that Shall be Avoided at NTDA Meetings**

1. Current or future prices. (Great care must be taken in discussing past prices.)
2. What constitutes a "fair" profit level.
3. Possible increases or decreases in prices.
4. Standardization or stabilization of prices.
5. Pricing procedures.
6. Cash discounts.
7. Credit terms.
8. Control of sales.
9. Allocation of markets.
10. Refusal to deal with a corporation because of its pricing or distribution practices.
11. Whether or not the pricing practices of any industry member are unethical or constitute an unfair trade practice.