

For more than 80 years, CSPA has offered an opportunity for members of the chemical industry to promote the use of consumer specialty products, and the mutual interests of persons engaged in, or allied with, the production or marketing of these products. CSPA's long-standing commitment to careful surveillance of Association meetings and activities is meant to ensure that neither the Association nor any of its members will be exposed to claims of antitrust violations as a result of participation in CSPA activities.

This general guide has been prepared for current and prospective CSPA members for the purpose of providing basic antitrust information and to acquaint the reader with CSPA's antitrust policy. An equal responsibility exists on the part of each CSPA member to understand these principles and to preclude any activity that may give even the appearance of improper conduct.

Summary of Procedures

An agenda is required in advance for each meeting of the Association members on any subject. A staff member, or other designated Association representative, at the direction of the President, should attend each meeting sponsored by CSPA. Minutes covering the subject discussed at each meeting must be prepared. All minutes should be reviewed by counsel.

Antitrust Laws and CSPA Association Activities

In general, trade associations such as CSPA are subject to strict examination by both state and federal agencies to ensure compliance with antitrust restrictions. Any association, by virtue of its composition of competing member firms joined for a common purpose, must proceed with extreme caution in certain activities to preclude violation of these statutes. CSPA, in Article III of its bylaws entitled "Objectives," has been careful to limit Association activities to engaging only in any lawful method of cooperative activity.

Applicable Federal Antitrust Provisions

The most important antitrust statutes governing 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 "every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations." The Sherman Act prohibits any understanding that may restrain trade or impair competition, regardless of the purpose of such understanding. Members of an association reaching any form of an understanding or agreement concerning price would be prohibited from justifying such understanding on the basis that it would benefit the consumer. The Sherman Act is a criminal statute and extends to both active and inactive participants in any illegal discussion concerning price fixing or other restraints of trade. Thus, participants who merely attend such a meeting may be criminally liable and subject to as great a penalty as those who might actively have agreed to fix prices.

Section 5 of the Federal Trade Commission (FTC) Act declares as unlawful "unfair methods of competition" and "unfair or deceptive acts or practices" in, or affecting, commerce. In contrast to the Sherman Act, the FTC Act empowers the Commission to reach anti-competitive activities committed by individual persons or companies whether or not there is any agreement or "combination." The FTC Act, like the Sherman Act, covers joint actions.

Penalties for Violation of Antitrust Statutes

Penalties under both federal statutes are severe and may be enforced against association members and staff by both representatives of the government and by private parties utilizing treble damage remedies. Penalties under the Sherman Act include a fine of up to \$350,000 and imprisonment for up to three years for individual convictions and a corporate fine as high as \$10,000,000. Violations of the Federal Trade Commission Act are subject to cease and desist orders, which impose significant restraints upon an association and its activities. Violations of these provisions can result in fines as high as \$10,000 per day.

Case Law

A 1980 decision by the United States Court of Appeals for the Second Circuit recognizes an association's obligation to guard against the misuse of association codes and standards for anticompetitive purposes. The decision, Hydrolevel Corporation v. The American Society of Mechanical Engineers, 456 U.S. 556 (1982), states that associations which develop industry standards have "a corresponding duty to guard against the misuse of such influence [standards or codes]" and "a duty to be aware of and guard against the temptations thus afforded by inherent conflicts of interest."

Potential Problem Areas

Potential antitrust problem areas for associations include: (1) price fixing; (2) agreements to divide territories or customers (even an agreement to keep out of another's territory); (3) membership restrictions, where members of an association derive economic benefit and the denial of membership to an applicant would limit that applicant's ability to compete; (4) voluntary industry standards that favor some competitors and discriminate against others; and (5) industry self-regulation through establishment of codes of ethics where efforts to enforce such codes would result in economic injury to certain members.

Topics of Discussion to be Avoided at Any Association Meetings and with Any Other Industry Members

There are certain basic topics which company representatives should not discuss with other industry members at conventions, meetings or even on the telephone. These include:

- Prices
- What constitutes a "fair" profit 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 corporation because of its pricing or distribution practices
- Whether or not the pricing practices or any industry member are unethical or constitute an unfair trade practice.

CSPA Survey

CSPA conducts a number of annual surveys concerning production of various classes of products of interest to CSPA members. The surveys are conducted pursuant to very strict procedures where the respondents submit their reports to an independent research and accounting firm, which promptly tabulates the totals and destroys the individual replies. Where the number of companies reporting in a particular product category is so small that publication of the totals could reveal confidential information, the totals are always aggregated to avoid such revelation. These surveys, which are given wide public distribution, contain important statistical information widely used by the industry. Under the strict CSPA safeguards, these surveys in no way compromise any antitrust restrictions applicable to trade associations or industry members.

Avoidance of Antitrust Implications at CSPA Meetings and Conventions

As expressed in the bylaws, it is CSPA's mandate to engage only in lawful methods of cooperative activity. All members of the Board of Directors, as well as committee chairpersons, receive copies of this antitrust guide. In addition, the guide is widely circulated within the membership and is available free upon request by any CSPA member firm. Close working relationships are maintained between CSPA staff and legal counsel to ensure current communication of the latest antitrust laws and court decisions that concern trade association activities. New Association programs or changes in current programs that might have antitrust implications are reviewed by counsel prior to implementation. CSPA mid-year, annual, and Board of Directors meetings are regularly scheduled pursuant to CSPA bylaws. Counsel is present at all meetings of the Board of Directors and at other meetings where policy issues will be discussed. All meetings, whether of task forces, ad hoc committees, or divisional or general interests must be scheduled and authorized through an appropriate member of CSPA staff; non-sanctioned meetings are prohibited. Staff members and counsel are entitled to participate in all activities of the Association, including all meetings of CSPA members, at the direction of the President.

Proper representation of the interests of any participating CSPA member firm includes an awareness of the basic potential antitrust problems and an alertness to head off any potential problems before they materialize. Participants in any CSPA meeting or activity are invited to immediately raise any antitrust questions with respect to that particular activity and all chairpersons of CSPA committees are directed to respond to the inquiry immediately before continuing with the particular activity. CSPA staff and counsel are available to respond to any antitrust issues raised at CSPA sanctioned meetings and activities.

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CSPA ANTITRUST POLICY



Serving Makers of Formulated Products for Home and Commercial
Use Since 1914.