
Antitrust Disclaimer

The antitrust laws of the United States, various U.S. states, as well as other jurisdictions prohibit agreements, combinations and conspiracies in restraint of trade. As for example, the U.S. Federal Trade Commission has said, “antitrust enforcers have always been concerned about the potential for harm arising from the activities of trade groups made up of competitors.” Because ISSB Investor Advisory Group (“IIAG”) and other trade and professional associations are, by definition, combinations of competitors, one element of a possible antitrust violation is always present, and only some action by this association that unreasonably restrains trade needs to occur for there to be an antitrust violation. Consequently, associations can be common targets of antitrust plaintiffs and prosecutors.

The consequences for violating the antitrust laws can be severe. 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. Antitrust laws prohibit competitors from engaging in actions that could result in an unreasonable restraint of trade. Above all else, IIAG members should be—and are—free to make business decisions based on the dictates of the market.

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 have a harmful effect on competition. These generally include price fixing, allocation of customers, markets or territories, bid-rigging, and some forms of boycotts. Any discussion of factors or practices that impacts price or the terms of client relationships must be avoided. Other actions such as standards development 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. These areas also should be approached with caution and legal guidance.

The IIAG has a policy of strict compliance with federal and state antitrust laws. IIAG members should avoid discussing certain subjects when they are together - both at formal IIAG meetings, other meetings and in informal contacts with other industry members - and should otherwise adhere strictly to the following guidelines:

- DO NOT discuss prices, fees or rates, or features that can impact (raise, lower or stabilize) prices such as discounts, costs, terms and conditions or profit margins. 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 agree with competitors as to uniform terms of sale, contract provisions, and/or investment decisions. DO NOT agree with competitors to divide up customers, markets or territories. DO NOT discuss your customers/clients with your competitors.
- DO NOT exchange data concerning fees, prices, production, sales, bids, costs, customer credit, or other business practices unless the exchange is made pursuant to a well-considered plan that has been approved by IFRS's legal counsel and your own in-house counsel.
- 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 agree to any membership restrictions, standard-setting, certification, accreditation, or self-regulation programs without the restrictions or programs having been approved by IIAG's legal counsel.
- DO insist that IIAG meetings that have agendas are circulated in advance and that minutes of all meetings properly reflect the actions taken at the meeting. DO leave any meeting (formal or informal) where improper subjects are being discussed. Tell everyone why you are leaving.
- DO ensure that IIAG staff or the IIAG Chair/Vice-Chair send out all correspondence on behalf of IIAG and that IIAG members do not hold themselves out as speaking or acting with the authority of IIAG when they do not, in fact, have such authority.
- DO ensure that if questions arise about the legal aspects of IIAG's activities or your individual responsibilities under the antitrust laws, you seek advice and counsel from your own counsel or from the staff and counsel of IIAG. Any questions about IIAG's antitrust policy should be directed to IFRS's legal counsel.