

# **Insurance Accounting and Systems Association**

## **ANTITRUST COMPLIANCE GUIDELINES**

The antitrust laws aim to protect the public from agreements between competitors that affect the price or distribution of products and services while promoting fair and vigorous competition in the marketplace. Insurance Accounting and Systems Association (IASA) member companies, as competitors in the market, will always act in their individual, competitive best interests. When member companies meet at IASA functions, however, there are legitimate concerns about the application of the antitrust laws to their discussions. Those attending private industry meetings or functions should not assume any exemptions under the McCarran-Ferguson Act extend to meeting activities. This policy statement is intended to provide general guidance regarding the permissible areas of discussion.

It is imperative that participants avoid any discussion of prices, market allocations, product or service restrictions or any conduct that could be construed as a boycott. These topics are per se illegal. The intent of the parties or the effect on competition is irrelevant. Other commercial activities may also be violations of antitrust law if they constitute an “unreasonable” restraint of trade. The best advice to participants at IASA meetings is to stay within the formal agenda and to avoid any informal or formal discussion relating to specific company plans.

# **IASA'S COUNSEL'S OPINION AS TO THE LIABILITIES AND RESPONSIBILITIES OF IASA AND ITS PARTICIPATING MEMBERS UNDER THE FEDERAL ANTI-TRUST LAWS**

IASA is devoted to the study, research and development of Accounting and Systems and exists to provide a forum for Insurance Companies (and Business interested in the Insurance Industry) to discuss common problems and seek ways to solve them. However, IASA and its members should always be alert to insure that their activities do not venture into areas forbidden by Federal or State Anti-Trust Law.

Section One of the Sherman Act prohibits Agreements, Combinations and Conspiracies in restraint of Trade. The proof of any unlawful activity under the Act does not require evidence of a formal agreement or understanding on the part of the conspirators. Quite frequently, proof of any unlawful activity can be circumstantial.

IASA and other Trade Associations are "combinations" by definition and are particularly vulnerable to Anti-Trust Laws. The Federal Trade Commission is carefully scrutinizing all Trade Associations for any possible Anti-Trust activities and IASA and its participating members should always be cognizant of the possible Anti-Trust problems inherent in its activities and should always be willing to take steps necessary to prevent the Anti-Trust problems that quite frequently can arise in connection with meetings and activities. Any departure from the Association's Anti-Trust policy statement and its Anti-Trust Compliance procedure may involve violation of the criminal laws of the Federal and State Governments. Criminal Proceedings may be brought not only against the Association and its members but also against employees of the Association and employees of its members. Heavy fines (up to \$1,000,000.00 for the Association and \$100,000.00 for an individual) and even imprisonment (up to 3 years) may be imposed. In addition, conviction is now classified as a felony and could result in forfeiture of the individual's civil rights. In addition, Civil suits may also be brought which are costly to defend and may end in burdensome injunctions and liability for substantial treble damages.

Listed below are some common Anti-Trust problem areas affecting Associations with a brief discussion of each area:

1. Membership in the Association may not be unduly restrictive. Any restrictions on membership must have one reasonable functional relationship to the group (The Insurance Industry) the Association exists to serve.
2. No member should be expelled from membership except for reasons unrelated to competition or commercial considerations. Even if reasons for expulsion are so unrelated a procedure should be established to provide a member due process prior to expulsion becoming permanent.
3. Membership dues should always remain reasonable, and should not be used to exclude members from participation in the Association.
4. The right to vote should always be granted to regular members on a uniform, nondiscriminatory basis.
5. All matters concerning membership, including but not limited to the application process, setting and payment of dues, and expulsion of members should be reviewed by Counsel.

The Association should avoid, whenever possible, the establishment and/or enforcement of a "code of ethics" or "rules of conduct." Enforcement of such a code can amount to a boycott, a clear restraint of trade.

6. Meetings should be held only when there is Association Business to discuss. "Rump" Meetings should always be avoided.
7. Participation in Statistical reporting programs should be voluntary. Any statistical reporting program should be conducted without coercion, penalty, etc. and the data should be collected, whenever possible by an independent third party (such as IASA). Any individual company's data should be kept confidential and should be compiled and distributed in such a form so as to conceal the identity of any specific company. The data collected should be available to all members and non members, and to customers and suppliers of The Insurance Industry. Joint discussion and analysis of the data gathered by the Association members should be avoided.
8. The greatest care should be utilized if the Association becomes involved in "standard setting" to insure that the standards do not impose an undue hardship or burden on smaller companies.
9. The Association should avoid any lobbying activities, wherever possible, but where such activities are carried on they should be done so in an ethical and factual manner.
10. Any Association service or document which is of competitive benefit must be made available to non members, but access to a specific service need only be granted upon a non member's request. Where such service or document is requested by a non member it may be provided at a fee higher than that charged to members provided such fee is reasonable.
11. In every event matters pertaining to premiums, rates, allocation of policyholders, territories or markets, restriction on volume of production and matters pertaining to company costs should be strictly avoided.
12. Staff members of IASA should not communicate with officials of the Federal Trade Commission or the Anti-Trust Division of the Department of Justice without prior approval of the Association's Counsel.
13. The following topics of discussion must be avoided at all Association meetings (where their effect might be to impede or discourage competition, or restrain trade):
  - A. Past, current or future premiums, rates, prices and/or the uniformity or stability of same.
  - B. Profits and profit levels.
  - C. Allocation of policyholders, territories and markets.
  - D. Standardization of products and product costs.
  - E. Trade abuses, where discussion or activities have the character of group boycott.
  - F. Ethics and conduct of members and non members.
  - G. Credit information and terms.

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## **IASA ANTITRUST GUIDELINES FOR PANEL CHAIRMAN, PANELISTS AND PAPER WRITERS**

While IASA is devoted to the study, research and development of modern theory, practice and procedure as applied to insurance accounting and statistics and exists to provide a forum for insurance companies (and businesses interested in the insurance industry) to discuss common problems and seek ways to solve them, IASA and its members should always be alert to insure that their activities do not venture into areas forbidden by Federal or State antitrust laws.

Section 1 of the Sherman Act prohibits agreements, combinations and conspiracies in restraint of trade. The proof of any unlawful activity under the Act does not require evidence of a formal agreement or understanding on the part of conspirators. Quite frequently, proof of any unlawful activity can be circumstantial.

IASA and other trade associations are "combinations" by definition and are particularly vulnerable to antitrust laws. The Federal Trade Commission is carefully scrutinizing trade associations for any possible antitrust activities and IASA and its participating members should always be cognizant of the possible antitrust problems inherent in its activities and should always be willing to take steps necessary to prevent the antitrust problems that quite frequently can rise in connection with meetings and activities. The consequences of violating the antitrust laws can be catastrophic when consideration is given to the extremely high cost of defending suits, the penalties, including treble damages which can be levied against corporations and individuals and also criminal sanctions against individuals, including incarceration.

Listed below are a number of guidelines which you should keep in mind in preparing and delivering a paper at an IASA meeting and in your participation in IASA activities:

1. IASA exists to provide educational and informative material to assist its members in improving their individual operations. Topics covering wages and fringe benefits, public relations, labor relations, company safety, governing relations and regulations, company efficiency, education and training programs, health programs, product research, publicity, taxes, etc., are all permissible topics for papers as long as the paper has as its objective the dissemination of educational, informative material that will benefit the participating members. (The foregoing list is not intended to be exhaustive.)
2. In every event, anything dealing with premiums, rates, prices, etc. should be strictly avoided. Similarly, topics dealing with price or rate uniformity or stability should also be avoided.
3. Any topics dealing with the allocation of policyholders or customers, territories and markets, should be avoided.

4. Topics concerning the restriction of volume of production or sales and production or sales quotas should always be avoided.
5. References concerning products and product costs of individual companies should be avoided wherever possible.
6. Discussion of "trade abuses" within the industry and proposals for their elimination are also considered to be "off-limits." Activities of this nature have the character of a group boycott. It may be that the abuse constitutes a form of competition, depending upon one's point of view.
7. Topics concerning rules of conduct or ethical codes should be avoided whenever possible since there is precedent that rules of conduct are anticompetitive on their face.
8. Naturally, topics and discussions about profit levels should also be avoided.
9. Product standardization or standardization of industry activities can be a legitimate topic so long as it is not associated with an effort to fix prices, to eliminate products or competitors, or to otherwise restrict competition. The standardization of products, policies and activities is not unlawful but the standardization to force uniform prices, rates or otherwise to eliminate some aspect of competition among members of an industry is unlawful. Standards confined to accounting or performance characteristics etc., are less likely to have antitrust implications than those developed for commercial considerations.
10. You should approach with caution any topics concerning the collection and distribution of credit information concerning delinquent customer or policyholders.
11. The collection and distribution of industry statistics is an important activity of IASA. As noted above, the thrust of any statistical gathering and distribution should be for educational and informational purposes only. If the statistical information enables members to increase rates, prices, control profits, restrict products, curtail entry of competitors into the market, etc., an antitrust violation would be evident.
12. Statistics about the industry or statistics about selected members of the industry should, if feasible, be collected, compiled and distributed by an independent organization. The statistical compilations should not refer to any members by name and should contain no recommendations of any kind. The compilations should be made available to the general public by IASA.