



Antitrust Law Compliance Policy, Guidance and Statement for Recital at Irrigation Association Meetings and Educational Sessions

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Background

The antitrust laws of the United States and the various states prohibit agreements, combinations and conspiracies in restraint of trade. Trade Associations like the IA perform many useful and legitimate functions (including promoting industry products, joint activity in connection with legislation, regulations and other government activities, product safety, and vocational training). However, the very fact that trade association meetings bring together industry competitors and other market participants makes them vulnerable to antitrust scrutiny and can expose members to antitrust claims.

Because the IA and other trade and professional associations are, by definition, combinations of competitors, one element of a possible antitrust violation is generally present, and only some action by the association that unreasonably restrains trade generally needs to occur for there to be an antitrust violation. Consequently, associations are common targets of antitrust plaintiffs and prosecutors.

Section 1 of the Sherman Act, a key US antitrust law, prohibits any agreement between two or more companies that results in an unreasonable restraint of trade. There is no safe harbor under the antitrust laws for trade association activities. Dealings among competitors that violate the federal antitrust laws still violate the law if done through trade associations. Violating the Sherman Act is a felony that can result in imprisonment for up to 10 years, in addition to civil penalties and reputational damage.

The consequences for violating the antitrust laws can be severe. A conviction can carry stiff fines for the association and its offending leaders, jail sentences for individuals who participated in the violation, and a court order dissolving the association or seriously curtailing its activities. The 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. As the principal federal antitrust law is a criminal conspiracy statute, an executive who attends a meeting at which competitors engage in illegal discussions may be held criminally responsible, even if he or she says nothing at the meeting. The executive's attendance at the meeting may be sufficient to imply acquiescence in the discussion, making them liable to as great a penalty as those who actively participated in the illegal agreement.

The antitrust laws prohibit competitors from engaging in actions that could result in an unreasonable restraint of trade. Above all else, association members should be free to make business decisions based on the dictates of the market – not the dictates of the association.

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 actually have a harmful effect on competition; the effect is presumed. These generally include price fixing, allocation of customers, markets or territories, bid-rigging, and some forms of boycotts.

In addition, there are many features that factor into price; agreements as to warranty duration, freight terms, or other factors that can directly impact price also are proscribed.

Other actions such as standards development, certification programs, 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; the pro-competitive effects must outweigh the anti-competitive ones. These areas also should be approached with caution and legal guidance.

Our Members

IA is the leading membership organization for irrigation equipment and system manufacturers, dealers, distributors, designers, consultants, contractors and end users.

The IA is dedicated to promoting efficient irrigation technologies, products and services. The association serves its members and the irrigation industry by:

- Educating the public on sound practices and water management.
- Serving as a centralized clearinghouse for research and innovation.
- Improving industry proficiency through professional development and continuing education.
- Recognizing and promoting experience and excellence with professional certification.
- Lending expertise to water-use public policy at the local, state, regional and national levels.

IA Antitrust Law Compliance Policy

The IA has a policy of strict compliance with federal and state antitrust laws. The IA does not play a role in the competitive decisions of its members or corporate supporters. The IA does not attempt to influence the policies or operations of its corporate supporters. It does not force corporate supporters or individual irrigation professionals to adhere to uniform positions or standards espoused by the IA. The IA in no way attempts to encourage or sanction any particular business practice.

Because the IA offers forums, activities, educational programming and meetings for the purpose of sharing diverse opinions on irrigation issues, it could be viewed by some as an opportunity for anti-competitive conduct. Therefore, this policy statement clearly and unequivocally supports the policy of competition served by the antitrust laws and to communicate the IA's uncompromising policy to comply strictly in all respects with those laws.

Under the antitrust laws, members and their representatives are not allowed to discuss certain topics with competitors including during an IA meeting, conference or event, scheduled sessions or side discussions. IA members should avoid discussing certain subjects when they are together – both at formal IA membership, Board of Directors, committee and other meetings and in informal contacts with other industry members. The following warnings, which apply to all contacts with a company's competitors, should be heeded by IA members and their representatives when attending IA meetings in order to avoid running afoul of the antitrust laws:

- DO NOT discuss prices, fees or rates, or features that can impact (raise, lower or stabilize) prices such as discounts, costs, salaries, terms and conditions of sale, warranties, 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, warranties or contract provisions.

- DO NOT exchange data concerning fees, prices, production, sales, bids, costs, salaries, customer credit, or other business practices unless the exchange is made pursuant to a well-considered plan that has been approved by IA's legal counsel.
 - DO NOT agree with competitors to divide up customers, markets or territories.
 - 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 discuss your customers with your competitors.
 - DO NOT agree to any association membership restrictions, standard-setting, certification, accreditation, or self-regulation programs without the restrictions or programs having been approved by IA's legal counsel.
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- DO insist that IA meetings that have agendas are circulated in advance and that minutes of all meetings properly reflect the actions taken at the meeting. All IA meetings generally should have written agendas prepared and circulated in advance.
 - DO leave any meeting (formal or informal) where improper subjects are being discussed. Tell everyone why you are leaving.
 - DO ensure that only IA staff sends out all written and electronic correspondence on behalf of IA and that IA officers, directors, committee members, or other members do not hold themselves out as speaking or acting with the authority of IA when they do not, in fact, have such authority.
 - DO ensure that if questions arise about the legal aspects of IA'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 IA.

Any type of joint effort with IA members should be first vetted by IA counsel, including data exchanges, joint ventures or lobbying efforts. We also want to avoid creating the appearance of illegal collusion, or that inappropriate communications or information exchanges are taking place. Any meeting with a competitor could later be interpreted as evidence of an illegal information exchange or of cartel activity. As much as possible, avoid side-meetings and conversations with your competitors during this meeting.

Any questions about IA's antitrust policy should be directed to the IA CEO, who will consult with counsel as needed.

Stopping the Conversation

Cartel agreements are agreements between competitors to fix prices, alter output, allocate markets or customers, or rig bids. This type of behavior is per se illegal, meaning there is no justification. It is automatically illegal. If these topics come up during the meeting:

- Interrupt the meeting and suggest pausing the conversation until it can be vetted by the IA CEO.
- If, after vocally objecting, the conversation continues, state that you are leaving the meeting and ask that the minutes reflect your concern and departure.
- Promptly leave and immediately contact the IA CEO.

It is possible that, if discussion steers towards a sensitive topic, it will be less obvious or overt than the per se violations discussed above. For this or other reasons, it may not be feasible to immediately interrupt or leave the discussion. If that happens:

- Avoid participating in the discussion.

- If you feel comfortable, suggest that the discussion be delayed until vetted by counsel.
- If the discussion continues, leave as soon as possible.
- Immediately contact the IA CEO.

If an inappropriate discussion arises during a side conversation in which you are involved, insist that it end immediately. If it continues, announce your intent to leave because you feel it violates the law. Leave, and immediately contact the IA CEO.

Lawmakers and regulators recognize that trade associations and standard-setting organizations often promote competitively benign or procompetitive activities, such as:

- Collecting publicly available information about the industry, organizing it, and disseminating it to industry participants.
- Setting industry standards that increase product interoperability, compatibility or safety.
- Creating a public website that informs customers about a complicated industry.
- Lobbying efforts.
- Coordinating collection and exchange of historical, aggregated industry data.
- Sharing non-strategic technical or scientific data that results in consumer benefits.

To that end, not all information exchanges with competitors are prohibited. There are safe harbors to guide information exchanges with procompetitive or benign purposes. Generally, information is not considered competitively sensitive if it is:

- Three or more months old.
- Collected and aggregated by a third party.
- Data aggregated from five or more firms, where no firm counts for more than 25% of the aggregated value, and it is impossible to identify any individual firm.
- Highly technical and nonstrategic.

Procompetitive or benign information exchanges that reduce fraud or confer consumer benefits are particularly encouraged. Nonetheless, all information exchanges with meeting attendees or trade association members should be cleared in advance with the IA CEO.

If you receive any documents containing non-public, competitor or industry information at a trade association meeting (for example, if a customer gives you a document that includes information about a competitor), make a notation on the document listing the source, date and context in which you received it, so that it is clear to a reader that the document is not evidence of an anticompetitive information exchange. Contact the IA CEO if you think the document could be viewed as evidence of prohibited activity.

If, after the meeting you become concerned about a topic that was discussed, immediately contact the IA CEO. Do not discuss the topic further with other participants.

Recital at Irrigation Association Meetings and Educational Sessions

The following statement may be recited at the commencement of, and should be included in any written materials to accompany, any IA-sponsored educational session, discussion group, or similar forum of IA members at which price-related topics may be discussed:

IA has a policy of strict compliance with federal and state antitrust laws. IA members cannot come to understandings, make agreements, or otherwise concur on positions or activities that in any way tend to raise, lower or stabilize prices or fees.

Members can discuss pricing models, methods, systems, and applications, as well as certain cost matters that do not lead to an agreement or consensus on prices or fees to be charged. However, there can be no discussion as to what constitutes a reasonable, fair or appropriate price or fee to charge for any service or product.

Information may be presented with regard to historical pricing activities so long as such information is general in nature and does not include data on current prices or fees being charged in any trade area. Any discussion of current or future prices, fees, discounting, and other terms and conditions of sale, which may lead to an agreement or consensus on prices or fees to be charged, is strictly prohibited.

A price-fixing violation may be inferred from price-related discussions followed by parallel decisions on pricing by IA members — even in the absence of an oral or written agreement.

Any questions about IA's antitrust policy should be directed to the IA Chief Executive Officer.