



9th Annual Advisory Board Meeting
September 17, 2020

Guidelines for Conduct at Meetings

Potential antitrust violations are inherently present at meetings where an essential element of an antitrust violation -- a combination of competitors -- exists. Discussions can generally involve any subject without raising antitrust concerns if they are kept free of even the suggestion of restraint of trade, or the selection of suppliers, customers, or prices.

Examples of conduct that clearly restrains competition and is presumptively unlawful include:

- (a) Agreements to raise, lower, stabilize, or in any other way establish price, or factors related to price, such as costs, wages, discounts, credit terms, or profit levels (discussion of past prices may also be suspect);
- (b) Discussions concerning what constitute a "fair" profit level;
- (c) Agreements to allocate or control markets, sales territories, customers or geographic territories;
- (d) Agreements to restrict or affect the availability of products or services, or the terms or conditions of their sale;
- (e) Discussions of the ethics or propriety of pricing practices, such as price adjustments, discounts, and credit terms, or whether said practices constitute an unfair trade practice;
- (f) Agreements requiring customers to purchase an ancillary item or service in order to buy the desired product or service;
- (g) Agreements to refrain from competing;
- (h) Agreements refusing to deal with third parties (boycotts).

Other areas to be scrutinized for antitrust compliance include discussions concerning statistical programs, joint research programs, group buying and selling programs, and certification.

All organizations and individuals should seek to avoid antitrust violations in connection with meeting activity, so participants should avoid engaging in conduct -- in meetings or socially -- that gives even the appearance of an impermissible conversation, agreement, alliance, or impropriety.

Meetings should be conducted in such a way as to minimize allegations of antitrust improprieties. A specified agenda and related topics should be adhered to and minutes should be taken. Participants always have the right to object to discussing any subject. Those chairing meetings should avoid discussing or making recommendations on subjects of questionable legality and should halt discussions of impermissible subjects. Less sensitive but suspect subjects, such as matters relating to data collection, cooperative research, and standard-setting, should be deferred until counsel can be consulted. Secret or "rump" meetings held when official meetings are scheduled should be avoided.

Disregard of these considerations can result in antitrust exposure for individuals and the companies involved. Civil and criminal penalties apply, and private rights of action are available to those alleging business interference or economic injury.