



ACC-WPA Antitrust Guidelines and Requirements

The antitrust laws of the United States and the various states prohibit agreements, combinations and conspiracies in restraint of trade. Because the Air Conditioning Contractors of Western Pennsylvania ("ACC-WPA") is, by definition a combination of competitors, one element of a possible antitrust violation is always present, and only some action by ACC-WPA that unreasonably restrains trade needs to occur for there to be an antitrust violation. Consequently, associations are common targets of antitrust plaintiffs and prosecutors.

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 him or her 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 have a harmful effect on competition. 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 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.

ACC-WPA has a policy of strict compliance with federal and state antitrust laws. ACC-WPA members should avoid discussing certain subjects when they are together - both at formal ACC-WPA membership, Board of Directors, committee, and 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 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, customer credit, or other business practices unless the exchange is made pursuant to a well-considered plan that has been approved by ACC-WPA'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 membership restrictions, standard-setting, certification, accreditation, or self-regulation programs without the restrictions or programs having been approved by ACC-WPA's legal counsel.

DO insist that ACC-WPA meetings have agendas that 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 ACC-WPA staff sends out all correspondence on behalf of ACC-WPA and that ACC-WPA officers, directors, committee members, or other members do not hold themselves out as speaking or acting with the authority of ACC-WPA when they do not, in fact, have such authority (see ACC-WPA's Policy on Apparent Authority).

DO ensure that if questions arise about the legal aspects of ACC-WPA'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 ACC-WPA.