



# **ANTITRUST COMPLIANCE TOOLKIT**

## **MODEL ANTITRUST CHECKLIST AND STATEMENT**

### **DIRECTIONS TO CHAPTER OFFICERS AND EXECUTIVES**

An officer or executive of the Chapter must bring the following items to every meeting:

- a copy of the formal Antitrust Compliance Policy that is kept as part of the Chapter's records;
- a formal, written agenda to be used and kept as part of the Chapter's records;
- a sign-in sheet to be used and kept as part of the Chapter's records;
- a copy of this statement (below) to read out loud at the beginning of the meeting; and
- a statement regarding what to do if there is a suspected antitrust violation.

Chapter meetings include any committee meeting, subcommittee meeting, membership meeting, work group meetings, or other occasion when business may be conducted.

### **STATEMENT TO READ OUT LOUD**

The Chapter's meetings and activities are subject to strict compliance with the Antitrust Compliance Policy ("Policy") and the antitrust laws, and shall be conducted in a manner that is consistent with the Policy and the antitrust laws.

Each individual member and attendee at this meeting is responsible for knowing the contents of the Policy and for complying with it. Copies of the Policy are available at this meeting.

Any discussion of competitively sensitive topics with a competitor should be avoided at all times before, during, and after any meeting or activity of the Chapter. If at any time during the course of any meeting or activity, Chapter executives or officers believe that the Policy is being violated, or will be violated, they will advise attendees as such and halt further discussion. Attendees at any meeting or activity also should immediately voice their concerns. The Chapter president will report the incident to ACI.

The Chapter uses a formal agenda for its meetings as part of the Antitrust Compliance Policy. We must use and follow the agenda. The Chapter also uses a sign-in sheet to document attendance at this meeting. Please sign the sign-in sheet and indicate your affiliation in readable print.

## **MODEL AGENDA**

### **MOTOR CITY CHAPTER OF THE AMERICAN CONCRETE INSTITUTE**

**Agenda for Meeting  
6:00 p.m. – May 30, 2015**

**Offices of Motor City Chapter  
1234 West Grand Boulevard  
Detroit, MI**

1. Call to order and sign-in sheet.
2. Recitation of anti-trust avoidance statement, President Aretha Franklin.
3. Old Business –
  - (a) Approval of minutes from April 2015 meeting.
4. New Business –
  - (a) Committee reports.
  - (b) Educational speaker, Dr. Marvin Gaye on ACI 1234-5678.
  - (c) Anti-trust pop quiz – prizes to members with perfect scores.
  - (d) Elections of new officers from the following slate:
    - Berry Gordy, Four Tops Concrete.
    - Stevie Wonder, Four Tops Concrete.
    - Gladys Knight, Four Tops Concrete.
    - Diana Ross, Four Tops Concrete.
    - Smokey Robinson, Temptations Concrete.
5. Adjourn.



## **WHAT TO DO WHEN YOU SUSPECT THERE HAS BEEN OR WILL BE AN ANTITRUST VIOLATION?**

### **I. WHEN THE SUSPECTED VIOLATION OCCURS**

If at any time during the course of any Chapter meeting or activity, the Chapter's executives or officers believe that the Antitrust Compliance Policy is being violated, or is about to be violated, the Chapter's executives or officers will take action to stop the alleged violation. This may include steering discussions away from competitively sensitive topics by:

- Redirecting the conversation ("I don't think we can talk about that. Let's move on to a new topic on the agenda. . .").
- If the speaker resists or continues, advising the attendees that the discussion is sensitive and may violate the antitrust laws, and affirmatively stating the conversation should cease.
- If you are an officer or executive of the Chapter, requesting that the speaker leave the meeting or activity.
- If you are an officer or executive of the Chapter, terminating the meeting and stating the reason for the termination.
- If you are not an officer or executive, leaving meeting. Make sure that the other meeting attendees notice your absence (this is the "tipped glass" or "noisy exit" tactic).

### **II. AFTER THE SUSPECTED VIOLATION OCCURS**

#### **A. What should you do as a member (or executive or officer) of the Chapter?**

Follow the reporting guidelines set forth in the Chapter's Antitrust Compliance Policy. If there is no policy or reporting procedures to follow, report the incident to the Chapter's executives or officers, its general counsel, and/or ACI's executives or officers and its general counsel.

If there is sufficient reason to believe an antitrust violation may have been committed, the Chapter should promptly undertake a review.

If there is a question whether an antitrust violation may have been committed, a Chapter office or executive should consult with the Chapter's general counsel promptly to determine whether an internal investigation is appropriate.

#### **B. What should you do as an employee of a company that is a represented at a Chapter meeting?**

Follow the reporting guidelines set forth in the company's antitrust policy. If there is no policy or reporting procedures to follow, report the incident to the company's general counsel.

## ANTITRUST POP QUIZ

1. Someone at a trade association meeting raises an issue that is not on the meeting agenda. The member complains that a company that is not a member of the trade association is selling its product at a competing trade organization's trade show. The member wants the company banned from selling its products during the trade show organized by your trade association. What do you do?

- a. Nothing. Everyone is entitled to speak their mind. It's guaranteed by the Constitution.
- b. Help develop policies about which companies can participate at the trade show.
- c. Quietly excuse yourself from the meeting.
- d. Re-direct conversation to the topics listed on the agenda ("I don't think we can talk about that. Can we move on to the next agenda item?").

2. The member will not stop discussing the issue in number 1 above at the meeting, despite requests from the meeting chair to return to the items on the agenda. What do you do?

- a. Support the member and request that the chair allow the member to continue expressing his/her concerns.
- b. Tell the member that you will discuss the topic with him after the meeting.
- c. Suggest to the member that the topic should be put on the next meeting's agenda.
- d. Quickly raise yourself from your chair, knock over your glass of water, and excuse yourself from the meeting.

3. As an officer of the association, what should you do if the member will not stop discussing the issue in number 1 above at the meeting?

- a. Listen attentively and commiserate with the member.
- b. Ask other attendees if they have concerns about the issue.
- c. Tell the member to place the topic on the next meeting's agenda.
- d. Re-direct conversation to the topics listed on the agenda ("I don't think we can talk about that. Can we move on to the next agenda item?").
- e. Announce to the attendees that this topic is a clear violation of the antitrust laws and terminate the meeting.

4. You finished a meeting at the annual trade association conference. Another member of the trade association, who is also your competitor, invites you for a drink at the bar. As you are at the bar drinking, other members of the association join you, many of which are your competitors. One member – your competitor – announces that his/her company will be making a public announcement on Monday that the competing company is raising its prices for a product that is similar to a product sold by your company. What do you do?

- a. Nothing. This will be public information on Monday.
- b. Call your boss and share the information.
- c. Ask if others at the bar will also be raising their prices.
- d. Indicate you do not want this information, terminate the conversation, and contact your company's legal counsel the next business day.

5. A member proposes at a trade association meeting that the association should enact a policy that prohibits membership in the trade association to companies that sell products containing materials not approved by the trade association. What do you do?

- a. Recruit members to vote for the policy.
- b. Call the association's or your company's legal counsel for advice.
- c. Identify those members that sell the products and let them know the policy may be enacted.
- d. Suggest that a committee be formed to review the proposal and make recommendations to the officers and executives.

6. A member proposes at a trade association meeting that the membership stop doing business with another member, Concrete Company, because Concrete Company has not completed various training programs offered by the trade association. What do you do?

- a. You agree and cancel your orders with Concrete Company.
- b. You ask the meeting chair to seek advice from legal counsel.
- c. You meet with other association members after the meeting and you all agree to stop doing business with Concrete Company, even if the association rejects the proposal.
- d. Ignore the proposal and continue doing business with Concrete Company.

**Answers:**

1 = d. C is a possibility but not as good as a noisy withdrawal when necessary.

2 = d.

3 = d or e.

4 = d.

5 = b.

6 = b. Even if you had a legitimate reason to cancel as stated in c, it would still look suspicious.

## **MODEL ANTITRUST COMPLIANCE POLICY**

ACI Chapters are committed to complying with all applicable laws, including federal and state antitrust laws and foreign competition laws. This Antitrust Compliance Policy is offered as a guide on topics or conduct that should be avoided during Chapter meetings and Chapter-related activities that could give rise to potential violations of the antitrust laws.

### **I. Severe Penalties for U.S. Antitrust Violations**

Penalties for violating federal and state antitrust laws are severe. Violations of the antitrust laws can have very serious consequences for ACI, Chapters, members, and staff, as well as the employees of ACI or Chapter members.

- **Criminal Penalties**

Antitrust violations can be prosecuted as felonies and violators can be fined and imprisoned. Individuals can be fined up to \$1 million per offense and sentenced to up to 10 years for each offense. Corporations can be fined up to \$100 million for each offense.

Additionally, an antitrust violation can result in extensive governmental restraints being imposed on ACI and its activities, as well as the activities of the Chapters, staff, members and members' employers. Failure to obey such an order can result in penalties of as much as \$10,000 per day.

- **Civil Penalties**

In addition to governmental prosecution for criminal antitrust violations, ACI, Chapters, staff, members, or members' employers may face a private antitrust action brought by competitors, consumers, or government officials. Civil penalties include payment by the defendant of three times the damages suffered by the plaintiff (treble damages) plus attorneys fees.

### **II. Anti-Competitive Conduct**

Chapters bring significant, pro-competitive benefits to their members, the industry, and the general public by promoting the proper use of concrete. Chapters bring together various individuals and groups in a local area to discuss and distribute technical and educational information about concrete. Chapters are comprised of competitors and, as such, discussions and conduct at Chapter meetings and other activities are scrutinized by enforcement agencies (such as the United States Department of Justice, Federal Trade Commission, and state agencies) for potential anti-competitive violations.

It is critical that Chapters are not used for anticompetitive purposes. Those prohibited purposes include fixing prices, limiting output, excluding competitors from the concrete industry, allocating customers or territories, or facilitating the exchange of competitively sensitive information between competitors.

It is also critical that a Chapter avoids even the appearance of impropriety. An executive, officer, member, or staff of ACI or a Chapter attending a Chapter meeting or activity at which competitors engage in illegal anti-competitive discussions may be held criminally and civilly responsible, even if the individual says nothing at the meeting. Attendance at the meeting or other activity may be sufficient to imply agreement with the discussions, making ACI, the Chapter, the individual and the individual's company potentially liable for antitrust violations.

It is impracticable and impossible to identify each and every act that could arguably be considered an antitrust violation. The following recommendations may assist Chapters in recognizing potential problems.

## **A. Prohibited Anti-Competitive Conduct**

Certain conduct is presumed to be illegal by the courts and is likely to be prosecuted as crimes. In general, members should avoid discussing or sharing information that is confidential or relates to competitively sensitive matters with other members. Members should also avoid conduct that could or does eliminate competitors from a market or limits their access to a market.

The following conduct must be avoided at any Chapter meeting or activity:

### **1. Price-fixing**

It is illegal for competitors to directly or indirectly fix, alter, peg, stabilize, standardize, or otherwise regulate the prices paid by customers. It is also illegal for a group of buyers to fix the prices they will pay for a product or service. The following topics must be avoided, as must any activity, recommendation, or other statement from a Chapter that could directly or indirectly result in price-fixing:

- prices, pricing methods, or formulas for computing prices;
- pricing practices, strategies, or patterns;
- pricing changes;
- pricing differentials for different types, sizes, or quantities of products;
- pricing floors or ceilings;
- standardization or stabilization of prices;
- terms or conditions of purchase or sale, including warranties, indemnification agreements, or other terms and conditions of sale affecting price;
- discounts, rebates, service charges, or credit terms;
- price advertising;
- data on costs, profit margins, or other data that bear on price; and
- what constitutes a fair or appropriate price or profit margin.

### **2. Bid-Rigging**

It is illegal for competitors to agree not to bid, to bid non-competitively, or to agree on the method by which bids will be determined, submitted, or awarded, including:

- who will or will not bid;
- who will bid to particular customers;
- who will bid on specific assets or contracts;
- who will bid high and who will bid low;
- the price firms will bid; and
- exchanging or signaling the prices or other terms of bids.

### **3. Allocation of Customers or Territories**

It is illegal for competitors to allocate or divide markets, territories, or customers, and the illegal conduct includes:

1. agreements to stay out of another's territory;
2. agreements not to compete for a customer or business opportunity in exchange for a competitor also agreeing not to compete for a customer or business opportunity; and
3. agreements to allocate exports or imports.

### **4. Output Restrictions**

It is illegal for competitors to fix, restrict, or limit the amount of product that is produced or services provided, including:

- restrictions on the design, production, distribution or marketing of products or product features;
- agreements to restrict export or imports;
- controls or limits on research; and
- sharing company data on production, capacity, inventory, and sales.

### **5. Group Boycotts**

It is illegal for competitors, suppliers, or customers to agree not to do business with other competitors, suppliers, or customers.

## **B. Potentially Anti-Competitive Conduct**

Certain conduct could be deemed anti-competitive under certain circumstances. Chapters must strictly adhere to the following policies in order to limit potential liability for ACI, the Chapter, members, or members' employers:

### **1. Membership Restriction**

ACI strongly endorses a policy to include all segments of the concrete industry in ACI and the Chapters. Membership in a Chapter *must* be open to anyone with an interest in concrete provided the individual/member complies with Chapter policies, including this Antitrust Compliance Policy, and membership obligations.

## **2. Industry Standards, Certification Programs, and Technical Publications, Interpretations and Opinions**

Industry standards, certification programs, and technical reports, interpretations and opinions generally are pro-competitive and lawful. However, they can be deemed anti- competitive if they are used to fix prices, restrain output, create boycotts, or exclude competitors from the market.

Chapters must strictly comply with all rules, policies, and regulations instituted by ACI regarding implementing, establishing, and/or recommending industry standards, certification programs, technical publications, and interpretations and opinions.

## **3. Statistical Reporting or Information Sharing Programs**

Chapters may participate in or facilitate statistical reporting or information sharing programs if the collection and distribution of the information is structured in such a way that will minimize the risk that it will facilitate collusion among competitors. To reduce the anti- competitive risk associated with such programs, all programs must be reviewed and approved in advance by ACI.

## **4. Miscellaneous**

Conduct that seems innocent should still be avoided if, when combined with other actions, it could contribute to a finding of anti-competitive conduct. The following conduct should be avoided due to their potential anti-competitive violations:

- complaints about the business practices of individuals or individual companies;
- discussions about the validity of any patent or the terms of a patent license;
- disclosure of confidential company plans regarding future product or service offerings;
- disparagement of a product or material;
- discussions regarding the pricing or bidding practices of any member or market participant;
- recommendations against the use of a product, material, or the services offered by a company or individual;
- control of the Chapter or Chapter committees or activities by any one group or any special interest group; and
- promotion of any specific commercial product, material, company, or individual.

### **III. Compliance with Antitrust Compliance Policy**

All Chapter officers, directors, members, and staff shall be required to review this Antitrust Compliance Policy and are responsible for familiarizing themselves thoroughly with the requirements of this Policy and any updates to it.

Strict adherence with the antitrust laws and the Antitrust Compliance Policy is a condition of membership, appointment, employment, association or affiliation with ACI and the Chapters. Any officer, director, member, employee, representative, or agent of ACI or a Chapter found in violation of the Antitrust Compliance Policy, the antitrust laws, or foreign competition laws shall be subject to strict disciplinary action, up to and including, immediate termination of membership, appointment, association or affiliation with ACI or the Chapter.

ACI and the Chapters reserve the right to take any and all reasonable and appropriate disciplinary actions against any officer, director, member, or staff who fails to comply with the Antitrust Compliance Policy in connection with their participation in ACI or a Chapter.

#### **A. Reporting of Potentially Anti-Competitive Activity**

Any Chapter officer, director, member, or staff with knowledge of activities believed to violate the Antitrust Compliance Policy or antitrust laws should, upon becoming aware of such activities, promptly report the matter to ACI's Director of Chapters Activities at (248) 848 - 3718.

Reports may be made anonymously. Reporters will not be penalized, sanctioned, or retaliated against in any way.

#### **B. Chapter Board of Directors, Executives, Officers, and Staff Responsibilities**

Chapter boards, executives, and officers are primarily responsible for implementation and enforcement of the Antitrust Compliance Policy. No Chapter board, executive, officer, member, or staff has any authority to act contrary to the Antitrust Compliance Policy.

The following policies may be adopted by a Chapter:

- a. Chapter distribution of Policy to each member annually and affirmative confirmation by member of receipt. Suggestions include emailing policy to members or requiring the Policy to be attached to annual membership application.
- b. ACI to update Policy annually and distribute to Chapters.
- c. Annual or other periodic training for Chapter board, executives, officers, and staff.
- d. Posting a link to Policy on each Chapter's website.

e. Reporting to ACI if any of the following happen:

- Anyone threatens to sue a Chapter or ACI;
- Actual suit being filed against Chapter or Chapter board, executive, officer or staff;
- Investigation by any governmental agency, including Department of Justice, Federal Trade Commission, any state agency, or any foreign agency;
- Any violation or potential violation of the Antitrust Compliance Policy during a Chapter meeting or activity; and
- Read an antitrust statement at each meeting/activity and include antitrust statement on each agenda (see below for more information).
- Include statement in Annual Report to ACI if the Chapter is complying with the Policy.
- Require all Chapter mailings, newsletters, announcements, agendas, meeting minutes, meeting materials, etc, to be submitted to Chapter for review for antitrust implications.
- Affirmative action if improper discussions or conduct occurs at Chapter meeting or activity such as the following: If at any time during the course of any Chapter meeting or activity, Chapter executives or officers believe that the Antitrust Compliance Policy is being violated, or is about to be violated, they will advise the attendees as such and halt further discussion. If necessary, Chapter executives and officers should request individuals violating the Antitrust Compliance Policy to leave the meeting or activity, or terminate the meeting or activity if the discussion does not cease.

#### **IV. Guidelines for Chapter Meetings and Other Activities**

All Chapter meetings and activities, including conference calls and social activities, should be conducted in a manner that avoids the appearance of improper conduct. Chapters should follow regular procedures as noted below.

##### **A. Procedures for All Chapter Meetings**

While Chapter meetings are largely technical or educational sessions and should not give rise to antitrust liability, Chapters should avoid any appearance of impropriety. As such, the following procedures should be followed:

- 1) Written agenda will be prepared and distributed in advance of the meeting. The agenda

will not include any subjects that are identified in the Antitrust Compliance Policy as being an improper topic to be raised at Chapter meetings.

2. The following Antitrust Statement will be printed on the agenda:

The Chapter's meetings and activities are subject to strict compliance with the Antitrust Compliance Policy ("Policy") and the antitrust laws, and shall be conducted in a manner that is consistent with the Policy and the antitrust laws.

Each individual member and attendee at this meeting is responsible for knowing the contents of the Policy, and for complying with it. Copies of the Policy are available at this meeting.

Any discussion of competitively sensitive topics with a competitor should be avoided at all times before, during, and after any meeting or activity of the Chapter. If at any time during the course of any meeting or activity, the Chapter executives or officers believe that the Policy is being violated, or will be violated, they will advise attendees as such and halt further discussion. Attendees at any meeting or activity also should immediately voice their concerns. The Chapter president will report the incident to ACI.

3. At the Chapter meeting, the Antitrust Statement will be read to the attendees at the beginning of each meeting.
4. Discussions at the meeting will be limited to agenda items unless approved by the Chapter president. Any deviation from the written agenda should be recorded in the minutes.
5. Accurate meeting minutes will be prepared. The minutes should include the time and place of the meeting, a list of all individuals present and their affiliations, a list or description of matters discussed, actions taken with a summary of the reasons therefore, a record of any vote taken, and an indication when any individual leaves or joins the meeting.
6. If at any time during the course of the meeting, Chapter executives or officers believe that a discussion violates the Antitrust Compliance Policy, or may violate the Policy, they will advise the meeting attendees as such and halt further discussion. Chapter executives or officers may need to eject persons from the meeting and/or terminate the meetings if the discussions do not cease. **The Chapter president will report the incident to ACI's Director of Chapter Activities at (248) 848-3718.**
7. Only materials approved by the Chapter executives and officers will be distributed.

8. Chapter will retain agendas, meeting minutes, materials distributed at meetings, announcements, public notices, and newsletters for a number of years [specify the number of years]. The materials will be submitted to ACI in accordance with the Chapter Guidelines.

## **B. Other Chapter Activities**

The Antitrust Compliance Policy, the antitrust laws, and foreign competition laws apply to all Chapter meetings, events and activities, including social events (such as post-meeting receptions and dinners), electronic communications (such as e-mail or webinars), and conference calls.

## **C. Speaking Policy**

Chapters and Chapter directors, executives, officers, members, and staff will strictly comply with ACI's Speaker's Policy.

## **V. Questions or Concerns**

Any questions about the propriety of Chapter activities or discussions taking place during a Chapter meeting can be directed to ACI's Director of Chapter Activities at (248) 848-3718.