

Idealliance Policies & Practices

2002-7

ANTITRUST POLICY

1.0 Summary

As organizations of competitors, non-profits must be vigilant to ensure that state and federal antitrust laws are respected. The general improvement of the industry benefits the public. This is why Congress granted the privilege of tax-exempt status to non-profit organizations. Our focus must be the general improvement of our industry. We must refrain from actions, which either may suppress competition among members or give members a competitive advantage over non-members.

2.0 Background

Being fully committed to vigorous competition, Idealliance is equally committed to compliance with state and federal statutes, which protect competition. These statutes include state and federal antitrust laws, such as the federal Sherman Act, which make certain types of anti-competitive behavior, such as price fixing and boycotts, felonies punishable by imprisonment and severe fines. Violators are also subject to civil liabilities, including treble damages.

All members of Idealliance must be zealous to ensure that these state and federal statutes are respected, not only in the letter of the law but also, in the spirit of compliance. It is particularly important for members to understand the special responsibility, which attends the privilege of belonging to a tax-exempt organization of competitors, joined together to advance the interest of the industry we share. While Idealliance looks to each member to fulfill this responsibility, Idealliance places a special burden on committee chairs, directors, officers, and staff, who are charged with ensuring the Antitrust Policy is respected at all times and in all circumstances.

3.0 Compliance

Each member of Idealliance shall be given a copy of this Policy. Compliance with this Policy is a requirement of membership. Violations of this Policy will subject the offender to sanctions, including expulsion from membership and referral to law enforcement authorities. We recognize that questions may arise in particular contexts. When such questions arise, they should be directed to the professional staff and Idealliance officers. It is the policy of Idealliance to resolve any doubt in favor of avoiding any conduct, which might be construed as anti-competitive. In a proper case, the opinion of legal counsel to Idealliance may be sought.

4.0 Guidelines

The Guidelines set forth below are not intended as a substitute for the duty of the member to become familiar with state and federal laws. Rather, they are intended to complement these laws.

- A. No member shall take part, directly or indirectly, in any anti-competitive conduct. Certain types of anticompetitive conduct are described next and include violations that are called "*per se*" offenses. Conduct that falls in this category is automatically presumed to be illegal by the courts, and the absence of any actual harm to competition will not be a defense. Conspiracies falling in the *per se* category are likely to be prosecuted as criminal offenses, in addition to resulting in civil liability, and include the following:
 - **Price-fixing agreements.** Agreements or understandings among competitors (or potential competitors) directly or indirectly to fix, alter, peg, stabilize,

standardize, or otherwise regulate the prices paid by customers are automatically illegal (i.e. *per se* illegal). An agreement among buyers fixing the price they will pay for a product or service is likewise unlawful. "Price" is defined broadly to include all price-related terms, including discounts, rebates, commissions, and credit terms. Agreements among competitors to fix, restrict, or limit the amount of product that is produced, sold or purchased, may be treated the same as price-fixing agreements; this treatment would apply as well to agreements involving this type of conduct in providing services.

- ***Bid-rigging agreements.*** An agreement or understanding among competitors (or potential competitors) on any method by which prices or bids will be determined, submitted, or awarded are *per se* illegal. This includes rotating bids, agreements regarding who will bid or not bid, who will bid high and who will bid low, agreements establishing who will bid to particular customers, agreements establishing who will bid on specific assets or contracts, agreements that establish the prices firms will bid, and exchanging or advance signaling of the prices or other terms of bids.
- ***Market or customer allocation agreements.*** An agreement or understanding among competitors (or potential competitors) whose purpose is to allocate or divide markets, territories, or customers are illegal.

There are other activities that, though typically not subject to criminal prosecution, are nevertheless sensitive and may lead to investigations or litigation. These include the following.

- ***Group boycotts.*** An agreement with competitors, suppliers, or customers not to do business with another party may be found illegal as a boycott or "concerted refusal to deal."
- ***Exclusionary standard setting, certification or code of ethics.*** Trade association standards-development, certification programs, and codes of ethics generally are procompetitive and lawful. Such activities may be found unlawful, however, if they have the effect of fixing prices or if they results in firms being unreasonably excluded from the market.
- ***Vertical price-fixing agreements.*** Agreements between suppliers and resellers that establish minimum resale prices may be unlawful in certain circumstances and in certain States, and if such action involves Idealliance it needs to be reviewed by Idealliance legal counsel before any such action is taken.
- ***Tie-in sales.*** A supplier conditioning the sale of one product on the customer purchasing a second product may be unlawful and if such action involves Idealliance it needs to be reviewed by Idealliance legal counsel and receive Idealliance executive approval before any such action is taken.
- ***Exclusionary membership criteria.*** Application of membership criteria with the intent or effect of excluding and disadvantaging others needs to be reviewed by Idealliance legal counsel and receive Idealliance executive approval before any such action is taken.

Other activities that also may be subject to investigation and potential litigation:

- **Joint research and development programs.** While not discouraged by the antitrust laws and potentially subject to some legislative protection, proposals for Idealliance involvement in these types of programs needs to be reviewed by Idealliance legal counsel and receive Idealliance executive approval before any such action is taken.
- **Lobbying.** While the Idealliance' right to lobby is subject to First Amendment protections, lobbying activity to be undertaken needs to be reviewed by Idealliance legal counsel and receive Idealliance executive approval before any such action is taken.

B. No member shall make any effort to bring about the standardization of any service or product for any anti-competitive purpose proscribed by state and federal laws.

C. In conducting Idealliance committee meetings, the chair shall prepare and follow a formal agenda. Minutes of the meeting shall be distributed to all committee members. Approval of the minutes shall be obtained from the committee at its next meeting. A copy of the minutes shall be transmitted to the Idealliance headquarters, Attention: CEO, and held in Organization's files. Because of their sensitive nature, certain topics will not be discussed at meetings of the Idealliance unless otherwise advised by legal counsel. These prohibitions apply equally to all Idealliance sponsored social functions or other informal association gatherings. **Off-limit topics include:**

- prices, pricing methods, or terms or conditions of sale;
- pricing practices or strategies, including methods, timing, or implementation of price changes;
- discounts, rebates, service charges, or other terms and conditions of purchase and sale;
- price advertising;
- what constitutes a fair, appropriate, or "rational" price or profit margin;
- whether to do business with certain suppliers, customers, or competitors;
- complaints about the business practices of individual firms;
- the validity of any patent or the terms of a patent license;
- confidential company plans regarding future product or service offerings; and
- any ongoing litigation.

D. Speakers at committee and other Idealliance meetings shall be informed of the Antitrust Policy and the requirement that it be respected in their presentations.