



ABA ANTITRUST POLICY

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American Bakers Association meetings are important, legitimate industry gatherings. However, they also offer opportunities for agreements among competitors that, even if innocently conceived, later may be found to violate the antitrust laws. Antitrust violations can lead to large civil penalties and, in some cases, to substantial criminal fines, debarment, and lengthy prison terms. A successful private plaintiff can recover three times its actual damages, as well as its attorneys' fees.

ABA is firmly committed to strict adherence to the antitrust laws. These laws generally bar agreements that limit competition. For example, they prohibit competitors from agreeing about:

- Prices they will charge to customers or pay to suppliers
- How they will calculate prices
- Other terms of sale or purchase, including credit terms
- Exchange of current or future price information
- Which competitor will sell to which customer, or buy from which supplier
- Whether they will buy from a particular supplier or sell to a particular customer
- The areas and products where each of them will concentrate its sales efforts
- How much output each of them will produce
- Whether to bid and the terms of bids to a government agency at any level
- Limitations on hiring employees from other firms (e.g., "no poach" agreements)
- Employee wages, benefits, or other terms of compensation

A prohibited agreement need not be written or even expressly stated. Recently, a respected judge said that an illegal agreement could be inferred from "a wink or a nod."

ABA members should watch what they say and do not only in formal meetings, but also in all business and social venues.

Antitrust violators often have made the mistake of assuming they won't be caught. However, the Justice Department's Antitrust Division uses federal agents and a variety of covert methods to identify violators.

Just being the subject of an antitrust investigation can be very expensive, so it is important to avoid appearances of misconduct as well as outright violations. Moreover, undergoing an investigation can be nerve-racking and distracting for the companies and individuals involved, and investigations can last for years.

ABA strongly encourages member participation at all levels within the Association. Adherence to these guidelines will help us all avoid antitrust issues.

If you have any questions about antitrust issues, please consult ABA's general counsel.



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