

INTERNATIONAL SAFE TRANSIT ASSOCIATION  
ANTITRUST POLICY STATEMENT  
AND  
GENERAL RULES FOR ANTITRUST COMPLIANCE

**INTRODUCTION**

Whenever competitors gather together in trade associations, professional associations or to establish industry standards, potential antitrust risks arise. The reason, of course, is that such meetings provide an opportunity for discussions among the association's members to go beyond topics related to the legitimate and pro-competitive purposes of the association to topics that competitors should not discuss with one another.

The antitrust laws, generally speaking prohibit coordinated conduct among competitors with respect to terms of trade, Agreements to fix prices or allocate customers or markets, for example, fall within this general prohibition. Agreements among competitors as to other business practices -- e.g., marketing practices, business hours - - have also been held unlawful. Agreements need not be express (e.g., written) to be unlawful. Tacit understandings reached by competitors may also violate the antitrust laws.

This is not to say that the antitrust laws prohibit all communications among trade association members with respect to their common business. On the contrary, the antitrust enforcement agencies and courts have always recognized that organizations like this Association may provide valuable services to their members and others, such as suppliers and customers, who deal with those members. Trade associations may benefit these groups, for example, by aggregating and disseminating information, sponsoring joint research on issues faced by the associations members, providing industry-wide marketing and promotion, or facilitating voluntary standard-setting. While these activities are not immune from the antitrust laws, with appropriate guidance they can be structured in such a way as to avoid any appreciable antitrust risk.

With this basic understanding in mind, the following are the ISTA Antitrust Policy Statement and the General Rules of Antitrust Compliance:

## **ISTA ANTITRUST POLICY STATEMENT**

The International Safe Transit Association (ISTA) is a not-for-profit corporation organized to serve and advance the profession and science of transport packaging. Its purpose is to provide, through its board of directors, various committees, and activities, at times a common meeting place where testing laboratories and their users, testing equipment manufactures and buyers of such equipment, manufacturers and users of packaging materials, suppliers of services and their potential customers can learn of current technical developments and share professional interests. ISTA is not intended to, and may not, play any role in the competitive decisions of its member companies or their employers, nor in any way restrict competition among users or suppliers in any of the industries it serves.

Through its conferences, seminars, educational courses, technical committee meetings, and other activities, ISTA brings together representatives of competitors in many manufacturing, service and sales areas. Although the subject matter of ISTA activities is normally technical in nature, and although the purpose of these activities is principally educational and there is no attempt to restrain competition in any manner, nevertheless the Board of Directors recognizes the possibility that the Association and its activities could be seen by some as an opportunity for anti-competitive conduct. For this reason, the Board takes the opportunity, through this Statement of Policy, to make clear its unequivocal support for the policy of competition served by the antitrust laws and its uncompromising intent to comply strictly in all respects with these laws.

In addition to the Association's firm commitment to the principle of competition served by the antitrust laws, the penalties which may be imposed upon both the Association and its members involved in any violation of the antitrust laws are so severe that good business judgement demands that every effort be made to avoid such violation. Certain violations of the Sherman Act, such as price-fixing, are felony crimes for which individuals may be imprisoned for up to three (3) years or fined up to \$100,000, or both, and corporations can be fined up to \$1 million for each offense. In addition, treble damage claims by private parties (including class actions) for antitrust violations are extremely expensive to litigate and can result in judgments of a magnitude that could destroy the Association and seriously affect the financial interest of its members.

It shall be the responsibility of every representative of a member company of ISTA to be guided by the Association's policy of strict compliance with the antitrust laws in all ISTA activities. It shall be the special responsibility of Association officers, committee chairpersons and event leaders to insure that this policy is known and adhered to in the course of activities pursued under their leadership.

To assist the ISTA staff and all of its officers, and committee officers in recognizing situations which may raise the appearance of an antitrust problem the Board will as a matter of policy furnish to each such persons the Association's General Rules and Antitrust Compliance. Should questions arise as to the manner in which antitrust laws may apply to the activities of ISTA or any committee thereof, such questions shall be directed to ISTA Headquarters.

Antitrust compliance is the responsibility off every ISTA member company and their representatives. Any knowing violation of the ISTA general Rules of Antitrust Compliance or this general policy by an ISTA member representative will result in that person's company being immediately suspended from membership in the Association, and removal of that representative from any Association office held.

## GENERAL RULES OF ANTITRUST COMPLIANCE

The following rules are applicable to all ISTA activities, and must be observed in all situations and under all circumstances without exception or qualification other than noted below:

1. Neither the International Safe Transit Association nor any committee, or activity of ISTA shall be used for the purpose of bringing about or attempting to bring about any understanding or agreement, oral or written, formal or informal, expressed or implied, among competitors with regard to prices, terms or conditions of sale, distribution, volume or production, territories, or customers.
2. No ISTA activity or communication shall include discussion for any purpose or in any fashion of pricing methods, production quotas or other limitations on either the timing, costs or volume of production or sale, or allocations of territories or customers.
3. No ISTA activity or communication shall include discussion which might be construed as an attempt to prevent any person or business entity from gaining access to any market or customer for goods or services or to prevent any business entity from obtaining a supply of goods or otherwise purchasing goods or services freely in the market
4. Neither ISTA nor any committee shall make any effort to bring about the standardization of any product for the purpose or with the effect of preventing the manufacture or sale of any product not conforming to a specific standard.
5. No ISTA activity or communication shall include any discussion of what might be construed as an agreement or understanding to refrain from purchasing any raw materials, equipment, services, or other supplies from any supplier.
6. In conducting ISTA committee meetings, the chairperson shall prepare and adhere strictly to a written agenda. Minutes or other records of the meeting to document discussion topics shall be distributed to all in attendance. The minutes should reflect ISTA's policy of complying with the antitrust laws. Approval of the minutes shall be obtained for the committee at its next meeting. A copy of the minutes shall be sent promptly to the ISTA technical Council via its secretary and an additional copy to ISTA Headquarters attn. Executive Director.
7. Speakers at educational activities, committee and other technical ISTA meetings "shall be informed of the Association's General Rules of Antitrust Compliance before their presentations.
8. At informal discussions at the site of any ISTA meeting or event, but beyond the controls of its chairperson or leader, all member representatives and all others in attendance are expected to observe the same standards of personal conduct as are required of the Association in its compliance with these antitrust guidelines.

Address all questions concerning antitrust policy and guidelines to:

President  
ISTA  
1400 Abbott Road, Suite 160  
East Lansing, MI 48823-1900  
Phone: 517-333-3437  
Fax: 517-333-3813

## **GUIDELINES FOR ALL MEETINGS AND EVENTS TO MEET THE GENERAL RULES OF ANTITRUST COMPLIANCE**

AT EVERY ISTA GATHERING, THE MEETING CHAIR OR EVENT LEADER MUST BE READ THE FOLLOWING.

The Board of Directors of the International Safe Transit Association (ISTA) has publicly stated its support for the policy of competition served by Federal antitrust laws, and its intent to comply strictly with these laws. In support of this Statement, as the ISTA officer, chairperson or representative in charge of this event, I am making the following requests before this event begins:

1. Everyone in attendance today should be familiar with the provisions of the ISTA Antitrust Policy Statement and General Rules of Antitrust Compliance, copies of which are available from me.
2. The agenda for this meeting or the schedule for this event shall be followed and permission of the chair or event leader must be obtained before any other matters of business are introduced.
3. During this gathering, there shall be no discussion of pricing methods, costs, volume or conditions of production or sale, allocation of territories or customers or any discussion which might be construed as limiting any person or business from free access to any market, customer, or source of supply."

TO HELP LEADERS AND THOSE IN ATTENDANCE UNDERSTAND WHEN THEIR DISCUSSIONS MAY GIVE RISE TO ANTITRUST CONCERNS, THE FOLLOWING IS A CHECKLIST OF SPECIFIC "DO'S" AND "DON'TS".

### **"Do's"**

1. Do prepare and adhere strictly to written meeting agendas.
2. Do keep minutes or other records to document discussion topics.
3. Do object to or leave any meeting that seems problematic from an antitrust perspective.
4. Do be sensitive to how even innocent remarks can be misconstrued or taken out of context. Thus, always use care when talking with competitors. There is no such thing as an "off the record" conversation with a competitor.
5. Do consult with legal counsel, as appropriate, to ensure compliance with the antitrust laws.

### **"Don'ts"**

1. Do not discuss prices, rates, or other terms of trade with competitors Do not identify specific customers or transactions in discussing your firm's experiences or issues facing the industry.
2. Do not engage in discussions that could result in (or even give the appearance of relating to): (1) the allocation of customers or markets; (2) the fixing or stabilization of prices; (3) limitations on production, (4) boycotts of customers, suppliers or rivals; or (5) concerted actions that would competitively disadvantage certain association members or other rivals,

3. Do not discuss proprietary or other competitively sensitive information. This would include, for example, prices, pricing formulas, product plans, and marketing plans that have not been publicly announced.
4. Do not discriminate against competitors when setting standards.
5. Do not give or listen to speeches or announcements, or participate in any discussions, encouraging coordinated behavior in order to maintain prices, profit margins or stability in the industry.
6. Do not attend formal meetings where standard meeting procedures are not followed or there is no fixed agenda.
7. Do not discuss matters of industry concern at informal meetings. Enforcement authorities are inherently suspicious when such discussions occur at impromptu meetings at a hotel, restaurant, bar or the like, after the formal meetings have concluded.

The foregoing "dos" and "don'ts" are designed to provide guidance to participants at association meetings, but they are not comprehensive. If any question arises relating to specific conduct or issues, you should consult with counsel to ensure compliance with the antitrust laws.