



## **Association of Ship Brokers & Agents (USA), Inc. (ASBA)**

### **Antitrust Law Compliance Policy and Guidelines – Jan. 2016**

It is the policy of the Association of Ship Brokers & Agents (USA), Inc. (ASBA) and its members to strictly comply with laws and regulations applicable to their activities, including federal and state antitrust laws. It is further the policy of ASBA to assist its members and volunteers in complying with federal and state antitrust laws. ASBA members and leaders are expected to conscientiously adhere to antitrust laws. ASBA will neither knowingly permit nor condone anti-competitive behavior, whether willful or inadvertent, in connection with any ASBA activity.

#### **ANTITRUST LAWS**

The antitrust laws seek to preserve a free competitive economy. As a general rule, competitors may not restrain competition among themselves through understandings or agreements as to the price, the production or the distribution of their products, or other agreements that unreasonably restrict competitive capabilities or opportunities of their competitors, their suppliers or their customers. The antitrust laws also prohibit monopolization, and attempts to monopolize, unfair methods of competition, unfair or deceptive acts or practices, most discrimination in prices between different purchasers in the sale of a commodity, exclusive dealing arrangements, most tying sales and requirements contracts, some joint ventures/mergers/consolidations, and similar activities. Any questions about specific antitrust laws should be addressed to the Executive Director of ASBA.

However, antitrust laws are often unclear in terms of applicability to any given conduct. Whether or not an antitrust violation exists depends purely on the specific conduct and facts involved in each instance. Notwithstanding the nebulous nature of the antitrust law, penalties for violating them, both civil and criminal, are severe. Certain activities can result in felony criminal convictions with penalties of up to three (3) years in prison and \$100K fines for individuals and \$1,000K fines for corporations per offense. Also, treble damages are available to private persons enforcing the antitrust laws.

ASBA members and leaders, in particular, have compelling reasons to understand and comply with antitrust laws because antitrust violation commonly consists of two elements: 1) concerted action which produces 2) an unreasonable restraint of competition. Since ASBA's activities involve meetings and activities of competitors (ASBA members), the concerted action element can generally be established without difficulty. The only other element necessary to prove a basic antitrust violation is to show that the action amounts to an unreasonable restraint of competition. So, agreements or activities of ASBA members that are anti-competitive or have an

anti-competitive effect, whether conducted as ASBA business or not, could result in serious antitrust consequences.

### **MEMBER RESPONSIBILITIES**

ASBA programs are carefully designed and monitored on an ongoing basis to ensure compliance with antitrust law. Every ASBA member, whether organizational or individual, has a duty and responsibility under law to avoid and prevent antitrust violations. Every ASBA member needs to understand basic antitrust laws, to recognize areas of potential antitrust risk, and to overtly object to and refuse to participate in any activity that poses antitrust risk until that risk is properly assessed and cleared by legal counsel or other qualified advisor.

### **AREAS OF RISK**

It is not possible to provide a complete or specific list of activities that amount to an antitrust violation. However, it is helpful to identify areas of risk, where close attention can be paid to the possible anti-competitive nature of the agreement or activity involve. Some areas of risk include discussions of the following:

- A. Controlling or influencing current or future prices (for purchase or sale), controlling or influencing price increases or decreases, or stabilization or standardization of prices (Note: Discussion of prices established by third parties not influenced or controlled by the discussing parties is generally not, standing alone, anti-competitive or illegal.)
- B. What constitutes a “fair” profit level
- C. Procedures for establishing selling prices, cash discounts, credit terms
- D. Allocation or division of markets or geographical divisions of markets among competitors
- E. Agreements, recommendations or suggestions that members refuse to deal with certain other persons or firms (boycott)
- F. Whether or not pricing practices of any competitor/industry member are unethical, or constitute an unfair trade practice
- G. Certification programs implemented to harm rivals rather than help customers.

Some discussion relating to activities identified above will not amount to antitrust violations. However, discussions relating to them require thorough prior antitrust analysis and guidance in the discussion.

### **ASSOCIATION MEETINGS**

To avoid even the appearance of impropriety, as well as to avoid inadvertent violation of antitrust laws, all ASBA board and committee meetings will be conducted in accordance with the following rules:

- A. A written agenda will be prepared and distributed in advance of each meeting. Agendized issues with potential antitrust implications will be reviewed and discussed by the president, chair and legal counsel, if deemed appropriate. Additions to the agenda having potential antitrust implications should be postponed, or discussions of such matters held with legal counsel.
- B. Accurate, detailed meeting minutes of every meeting will be prepared and reviewed. Audio, video or other recordings of meetings will not be permitted. Minutes will be approved at the next meeting.
- C. In the event of concern regarding potential antitrust implications of a discussion, discussion must be discontinued pending resolution of the matter through the executive director or legal counsel, if necessary.
- D. In the event that any member has a concern about potential antitrust implications of discussion during a meeting, he or she shall interrupt discussion and state that concern immediately. If discussion is not terminated and the concern resolved, the concerned member should state that he or she is leaving the meeting for that reason, and leave.
- E. Conversations involving discussion of matters in violation of this policy will not be tolerated at an ASBA meeting, and violating parties may be ejected from the meeting by the chairman.