



MEMORANDUM

1800 Massachusetts Ave,
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www.usgbc.org

To: USGBC Board of Directors
From: USGBC Chapter Steering Committee
Date: September 5, 2007
Subject: Antitrust Compliance Policy for Chapters

Antitrust Compliance Policy for Chapters

Who: This policy should be read, understood and followed by every member contact, every employee, every chapter member and all officers and leaders of USGBC chapters. Every employee and member has individual responsibility to recognize and avoid or prevent situations that may pose possible violations of this policy.

Why: It is the firmly established policy of USGBC to comply with all federal and state anti-trust laws, which are created to preserve a competitive economy in which free enterprise can flourish. USGBC also believes a free competitive economy is essential to the welfare of USGBC members and the country. USGBC Chapter compliance with the policy allows USGBC to maintain its excellent reputation with its members and in the industry. It is also the responsibility of USGBC chapters as independent, nonprofit organizations to comply with all federal and state antitrust laws. The USGBC Antitrust Compliance Policy for Chapters represents a basic level of antitrust compliance. Chapters must follow this policy, but are welcome to augment the policy if they choose.

What: The antitrust laws prohibit agreements developed or entered into which restrict members' freedom to make independent decisions about market competition. This means each member must independently set their products and services prices, establish production levels, develop sales and marketing strategies and territories, and select customers and suppliers.

Consequences: There are serious consequences for USGBC chapter violation of the antitrust laws, with severe repercussions for individuals, companies and the USGBC chapter.

- Individuals found guilty may be sentenced to 10 years in prison
- Corporate fines of up to \$100,000,000 and individual fines of up to \$1,000,000 may be imposed
- Additional fines, damages and legal fees may be imposed
- Injunctions and decrees can severely restrain business activities
- Enormous personal stress and upheaval may affect any individual tried for a criminal indictment

Why the USGBC Chapters are at risk: As independent nonprofit organizations that rely on members to advance its mission, USGBC chapters bring together people with common business interests for cooperative efforts (i.e. committee work). It is these kinds of meetings and their potential use for joint decision-making and action between competitors that makes USGBC chapters subject to scrutiny. Any contact with competitors creates a potential of antitrust violations.



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More about the risks: Great care must be taken to avoid not only the risk, but also the appearance of a possible antitrust law violation. Agreements between competitors, whether oral or written, formal or informal, express or implied, regarding prices, production, sales, marketing, customers or suppliers can potentially violate the law. Persons and companies actually innocent of wrongdoing may be found to have violated the law. In cases where it is difficult to prove wrongdoing by direct evidence, the courts have held that it is not necessary to find an express agreement – rather, it is sufficient if circumstantial evidence shows that concerted action was contemplated and the competitors conformed to the arrangement. As a result, it is necessary to avoid any action which may give the appearance of a violation.

How USGBC Chapters Follow the Antitrust Compliance Policy:

1. USGBC chapter meetings should be no more than reasonably necessary to accomplish the chapter's goals. All meetings should have a well-defined purpose, with advance notice and a written agenda, which should include the antitrust compliance statement (included at the end of this policy).
2. Chapter Boards should designate a Board member as the chapter's Antitrust Compliance Officer.
3. The antitrust compliance policy should be distributed to all Chapter Board members and committee leaders when they take office.
4. Chapter Board members and committee leaders should sign the antitrust compliance policy acknowledgment form when taking office and return it to the chapter's Antitrust Compliance Officer.
5. The antitrust compliance policy should be distributed to all chapter committee members for their information.
6. Chapters with staff should ensure staff is present at all chapter meetings to the extent possible.
7. Chapters should confirm, as part of their annual report to the USGBC, they are in compliance with the USGBC Chapter Antitrust Compliance Policy and have acknowledgment forms for all current Board members and committee officers.
8. The chapter's Antitrust Compliance Officer should spot check meeting agendas and meeting minutes for accuracy.
9. The chapter's Antitrust Compliance Officer should approve all other documents, reports and analysis that are distributed to members.
10. Chapters should know and follow the 'Do's' and 'Don't's' of the USGBC Chapter Antitrust Compliance Policy, which are set forth below.



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Guidelines:

A. Conduct In General

1. **DO** compete vigorously and independently at all times.
2. **DO** conduct your business in an ethical way and always adhere to the principles of honesty and forthrightness in the conduct of your business.
3. **DO** avoid any activities, either individually or collectively through USGBC, which could be characterized as unethical, unfair or deceptive.
4. **DO** contact USGBC's Compliance Officer or legal counsel if you have any questions about the lawfulness of any action you are contemplating.
5. **DON'T** write or say anything that you would not want to disclose to government enforcement agencies or in court.
6. **DO** try to conduct yourself so that you can always be in a position to truthfully and forcefully testify that you have not engaged in any conduct forbidden by the antitrust laws.

B. Conduct Involving Competitors

1. **DO** maintain at all times your Company's independence of judgment and action in pricing, producing, marketing and selling its products, and avoid any kind of agreement, understanding or arrangement, whether formal or informal, with representatives of a competitor regarding any competitive matters. Also, avoid even the appearance of collusion with a competitor regarding these matters.
2. **DO NOT** enter into any agreement, gentlemen's understanding, arrangement or discussion with any competitor concerning the following subjects at any USGBC meetings or on other occasions:
 - (a) prices, pricing policies, price changes, or price plans or intentions
 - (b) terms or conditions of sale, including credit or payment terms
 - (c) discounts provided to customers
 - (d) profits, profit margins or costs
 - (e) shares of the market
 - (f) bids, the intent to bid or the terms of bids
 - (g) sales territories or markets
 - (h) sales, marketing or promotional activities
 - (i) output or production plans
 - (j) downtime plans
 - (k) selection, classification, rejection or termination of customers or classes of customers



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- (l) exchange of competitive information, or
- (m) any other matter inconsistent with complete freedom of action and independence of your Company in the conduct of its business.

3. **DO NOT** act in concert with another competitor in your negotiations or dealings with vendors or customers.
4. **DO NOT** complain to a competitor about its business practices.
5. **DO NOT** obtain information about competitors (particularly price information) directly from competitors, but **DO** document the sources utilized to obtain information about competitors (e.g., put the date and source of a competitor's price information on the document itself at the time it is obtained).
6. **DO NOT** engage in any course of conduct or tactics that could be construed as being designed to exclude any competitors, eliminate one or more particular competitors, or control prices in a market.

C. Trade Organization Conduct

1. **DO NOT** engage in any of the following activities through USGBC unless USGBC's legal counsel has been consulted in advance:
 - (a) Developing or changing membership standards or criteria
 - (b) Selecting or terminating members, including denials of membership
 - (c) Exchanges of information, such as price or cost information
 - (d) Collection, dissemination, reporting or studies of members' data
 - (e) Standard setting or certification programs
 - (f) Joint purchasing arrangements
 - (g) Lobbying government agencies or for new legislation
 - (h) Exchanges of credit information or rating of customers
 - (i) Advertising restrictions
 - (j) Industry self-regulation and codes of ethics
 - (k) Joint research projects

Above all be alert. Watch for sensitive areas. Learn to recognize situations, transactions and activities actually or potentially affected by the antitrust laws. If a question arises as to the propriety of a certain action or practice, **STOP**. Do not attempt to make a legal judgment yourself, but consult with USGBC's Compliance Officer or legal counsel before proceeding further.

General Directions:

Every member has the individual responsibility to recognize and avoid or prevent situations which may pose possible violations of this policy.



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Should you become aware of an actual or potential situation that might violate this policy in any way, or should you be uncertain of your responsibilities in any particular situation, you should promptly bring the matter to the attention of USGBC's Compliance Officer or legal counsel. The goal of this procedure is to ensure compliance with our policy in a manner which will protect the legitimate interests of both the member and USGBC.

Remember: it is important that you clearly understand this policy in its application to your membership in your USGBC chapter, and report promptly all situations which conflict, or may conflict, with it.

Date: _____



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Antitrust Compliance Statement for inclusion in meeting agendas

USGBC ANTITRUST COMPLIANCE STATEMENT

Organizations such as USGBC may engage in a number of educational activities for its members and the public. For example, USGBC may collect or distribute to industry participants, customers and the public information about green building products or services. However, since organizations like the USGBC involve interaction and communications between competitors, they also are subject to scrutiny under the antitrust laws. It is the policy of USGBC to comply fully with the antitrust laws. To avoid creating any issues under the antitrust laws, the members of the USGBC should not engage in any discussions or agreements concerning the following topics either in formal meetings or informal social gatherings:

1. Prices, price changes, price quotations, bids, pricing policies, pricing philosophies, price levels, price differentials, mark-ups, discounts, or allowances;
2. Any element of price, including credit, warranties, or other terms and conditions of sale;
3. Output, production, profits or costs;
4. The customers to whom a company sells;
5. The territories in which a company sells;
6. The amount that a company pays for goods or services;
7. The selection, rejection or termination of customers or suppliers;
8. Business plans or strategies;
9. Restrictions on the development or use of technology; or
10. Exchange of any competitive information.

Please note that this statement is not complete and is only a general guide. The intent of this statement is to remind the members of the importance of continued compliance with the antitrust laws.

Updated October 18, 2006



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ANTITRUST COMPLIANCE ACKNOWLEDGMENT FORM

Return to: _____,

USGBC Chapter Compliance Officer, _____ (name of USGBC Chapter)

I have received a copy of the U.S. Green Building Council's Antitrust Compliance Policy for Chapters, have read it and understand its contents.

I will not engage in any activities prohibited by USGBC's Antitrust Compliance Policy for Chapters. I understand that any such action or failure to act can subject me to disciplinary action including possible expulsion from USGBC. In any instances in which I am in doubt, I will promptly consult with my USGBC Chapter's Compliance Officer. In addition, if I become aware of a potential or actual antitrust problem, I will immediately report the facts to the Compliance Officer.

Signature: _____

Name: _____

Title/Position: _____

Date: _____