



# US Fuel Cell Council

## ANTITRUST GUIDELINES FOR U.S. FUEL CELL COUNCIL, INC.

This document briefly summarizes the federal antitrust laws that apply to the association's activities and should be acknowledged in the minutes of each meeting of the Board of Directors. In addition, the guidelines should be followed at any Council meeting.

### Introduction

The antitrust laws prohibit contracts, combinations and conspiracies in restraint of trade. Because trade associations are, almost by definition, combinations of firms in the same industry, compliance with the antitrust laws are of primary importance.

There are both civil and criminal penalties for violating antitrust laws. An individual and a corporation found to have violated the antitrust laws may be fined up to \$350,000 and \$10 million, respectively. Individuals and corporate officers may be imprisoned for up to three years. In addition, there are civil penalties available to antitrust enforcement agencies such as a cease and desist order and dissolution of the association. In addition to government enforcement of the antitrust laws, an individual or company that suffers injury as a result of an antitrust violation may file a private suit against the violator and recover treble damages.

### Examples of Unlawful Conduct

In bringing competitors together for discussions and possible joint activities, associations may present opportunities to take collective action in violation of the antitrust laws. Thus, association members must avoid any discussion that constitutes an agreement by the members, express or implied, to take any action that might restrain trade. An "agreement" in this respect is broadly interpreted and may be oral or written, formal or informal. A "gentleman's agreement" to "hold the line" on prices is more than sufficient to evidence and unlawful conspiracy to fix prices.

Some examples of unlawful conduct are:

- Agreements to fix, control or otherwise limit price competition (price fixing);
- Agreements to refuse to deal with certain third parties (boycotts);

- Agreements to allocate customers or geographic territories or to limit production;
- Tie-in sales which require the customer to buy an unwanted item in order to buy the product desired.

### **Guidelines for Avoiding Antitrust Violations**

1. Meetings should be structured around items of association business that justify a meeting.
2. A meeting notice along with an agenda should be sent in advance to each member of the association; the agenda should be specific and avoid such broad topics as "marketing practices," that although entirely innocuous in purpose, might look suspicious to an outsider.
3. The meeting agenda should be strictly followed. In general, subjects not included on the agenda should not be considered at the meeting.
4. An association staff member should attend all meetings. If a member brings up for discussion a subject of questionable legality, he or she should be told immediately that the subject is not a proper one for discussion. This, of course, is the counsel's responsibility, but in counsel's absence, the association staff representative or any member present who is aware of the legal implications of a discussion of the subject should attempt to halt the discussion. It is advisable that members leave the meeting if the discussion continues.
5. Minutes of all meetings should be kept by the association, and they must accurately report what actions, if any, were taken.
6. Secret or "rump" meetings held at the time of the regular meeting should be strictly avoided. These informal meetings can jeopardize legitimate association activities and create a risk that those activities will be investigated.
7. During meetings there should be no recommendations related to price or pricing policies, including credit terms, discounting policies and other price related issues.
8. Members should not be in any way coerced into taking part in association activities. There should be no policing of the industry to see how individual members are conducting their business.
9. If there is any doubt about an association program or subject of discussion, members should check with association staff and counsel. Members may also wish and should be encouraged, to consult with their company's counsel.