

International Scientific Association for Probiotics and Prebiotics

ANTITRUST POLICY AND COMPLIANCE GUIDELINES

ASSOCIATION ANTITRUST LAW COMPLIANCE POLICY

It is the policy of the International Scientific Association for Probiotics and Prebiotics (ISAPP) 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 ISAPP to assist its members and volunteers in complying with federal and state antitrust laws. ISAPP members and leaders are expected to conscientiously adhere to antitrust laws. ISAPP will neither knowingly permit nor condone anti-competitive behavior, whether willful or inadvertent, in connection with any ISAPP 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. A more complete discussion of the antitrust laws (Sherman Act, Federal Trade Commission Act, the Clayton Act, the Robinson-Patman Act, and California's Cartwright Act) is available upon request from ISAPP.

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.

ISAPP members and leaders, in particular, have compelling reasons to understand and comply with antitrust laws because antitrust violations commonly consist of two elements: 1) ***concerted action*** with produces 2) an ***unreasonable restraint of competition***. Since ISAPP's activities involve meetings and activities of competitors (ISAPP Industry Advisory Committee 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 ISAPP members that are anti-competitive or have an anti-competitive effect, whether conducted as ISAPP business or not, could result in serious antitrust consequences.

MEMBER RESPONSIBILITIES

ISAPP programs are carefully designed and monitored on an ongoing basis to ensure compliance with antitrust law. Every ISAPP member, whether organizational or individual, has a duty and responsibility under the law to avoid and prevent antitrust violations. Every ISAPP 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 agreements or activity involve. Some areas of risk include discussions of the following:

- 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.
- What constitutes a “fair” profit level
- Procedures for establishing selling prices, cash discounts, credit terms
- Control of sales levels, inventory levels or timing of sales
- Allocation or division of markets or geographical divisions of markets among competitors
- Agreements, recommendations or suggestions that members refuse to deal with certain other persons or firms (boycott)
- Whether or not the pricing practices of any competitor/industry member are unethical, or constitute an unfair trade practice
- Agreements limiting or restricting advertising

It is important to bear in mind that every business is entitled to decide what prices it will charge, what wages it will pay, what vendors it uses, what it is willing to pay for supplies/raw materials, and similar matters. However, when competitors make an agreement concerning such matters, that discussion and agreement are likely to amount to a conspiracy to restrain trade. It is the agreement itself that constitutes the conspiracy.

Again, some discussions 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.

SAFE COMMUNICATIONS

As is the case with risky behavior, it is not possible to provide a complete or specific list of activities that do not constitute an antitrust violation. As always, the context and intent of each situation is critical in determining whether

or not a violation has occurred. However, certain conduct is generally considered safe.

For example, it is generally perfectly acceptable for a business -- acting on its own -- to aggressively promote itself, and compete vigorously, even to the detriment of its competitors. It is lawful for a business to refuse to do business with suppliers it does not like (with a few exceptions, mostly based on anti-discrimination laws), and to set its own prices (including undercutting the prices of competitors) in order to gain business at the expense of competitors. The key is that the business is making its own decisions for its own benefit; such decisions should NEVER be made in concert with competitors.

It is also generally safe for ASSN to educate and inform its members concerning matters relating to competition, including offering courses and certifications on best practices, efficient business or competitive practices, and similar matters.

It is also acceptable for ASSN to conduct legislative and lobbying activities that would be unlawful outside of the legislative context. For example, ASSN could sponsor and support legislation that would weaken ASSN member's competitors, or even put them out of business.

ISAPP MEETINGS

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

1. 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 chairman, executive director 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 or other qualified advisor present.
2. 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.
3. 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.
4. 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.
5. Conversations involving discussion of matters in violation of this policy will not be tolerated at an ISAPP meeting, and violating parties may be ejected from the meeting by the chairman.

This document has been prepared for general reference only. It is intended to inform ISAPP leaders and members of basic antitrust principles to assist them in acting responsibly in the conduct of ISAPP business activities. It must not be considered as a substitute for competent legal advice. It is recommended that interested persons confer with competent legal counsel concerning this and other significant legal issues.