

1. ANTITRUST LAWS

PTG shall comply with Federal Antitrust Laws. [79-138]

PTG's antitrust policy shall be based upon the most recent federal anti-trust laws, and shall be developed and maintained by the Home Office. To promote a common understanding of anti-trust issues, PTG's anti-trust policy document will be distributed as necessary to PTG members. [98-080]

a. Antitrust Policy [04-058]

As a means to promote the societies best interest by encouraging healthy competition and promoting legitimate business growth, to promote economic liberty aimed at preserving free and unfettered competition among it's members, the Piano Technicians Guild, Inc. (PTG) pledges to support national antitrust and consumer protection laws and regulations. There is no reason for an individual or company to withhold participation in, support for, or membership in PTG for fear of violating the antitrust laws. There are, however, areas of the law that PTG members should know about in order to maintain strict compliance with the antitrust laws.

The antitrust laws prohibit "combinations or conspiracies in restraint of trade." Strict compliance with antitrust laws by trade associations and their members is essential, since members of trade associations are usually competitors. Because trade associations are by definition a "combination," they are viewed with suspicion and, by definition, are half of an antitrust case. The other half of an antitrust case is the anticompetitive conduct. Generally this means that PTG members should not discuss with other members pricing, markups, division of markets or allocation of customers. The penalties can be severe! The PTG Antitrust Policy provides more detailed guidelines with which you should familiarize yourself and with which you should comply.

People join the PTG to pursue common business interests and purposes. PTG provides useful services for the benefit of members, including education, information sharing and advancing the interests of members. PTG and each of its directors, officers and members should conduct themselves so that no antitrust laws are violated when engaging in these activities. Even seemingly casual or inadvertent discussions at meetings or social gatherings (whether or not sponsored by PTG) can have antitrust consequences if misconstrued by government investigators. A conviction for violation of the antitrust laws can carry stiff fines for the association or its members or both. Individuals who participated in the violation may receive a jail sentence.

The PTG Board of Directors has established this Antitrust Policy in order to alert PTG members to those types of activities which are most likely to raise antitrust concerns and to provide guidance for avoiding antitrust liability.

- 1) Discussion at association meetings may cover a broad range of issues pertinent to the interests or concerns of participants, most of which do not have antitrust implications. A number of topics that might be discussed at association meetings, however, raise antitrust and trade regulation issues. Some of these topics are:

Price-Fixing. Historically, association members have been most likely to violate, and the government has been most likely to strictly enforce, the price-fixing prohibitions of the Sherman Act. A price-fixing violation may be inferred from similar price behavior by members, even in the absence of a written or oral agreement. If price-fixing is established, PTG and its members may not defend the claim on the basis that the prices set are reasonable or that the ends sought through the price-fixing behavior are beneficial to consumers.

Agreements to Divide Customers. An agreement among members of an association to divide customers is, in and of itself, a criminal act. The antitrust laws expressly prohibit any understanding or agreement between competitors or members of an association involving division or allocation of customers. Even an informal agreement whereby one member agrees to stay out of another's territory will constitute a violation of the antitrust laws. As with price-fixing, PTG and its members may not defend the claim on the basis that the allocation is beneficial.

Membership Restrictions. Assuming that the members of an association derive an economic benefit from membership, the denial of membership to an applicant may constitute a restraint of trade because it may limit the ability of the applicant to compete. Therefore, membership criteria must be carefully established with a view toward avoiding antitrust problems.

Standardization and Certification. An association that develops voluntary industry standards may face antitrust problems if the standard favors some competitors and discriminates against others. Similarly, association certification activities which further the interests of certain groups, to the exclusion of others, may result in antitrust problems.

Industry Self-Regulation. Associations commonly establish codes of ethics for their members, including procedures for enforcement of such codes. PTG must guard against any efforts to enforce such codes of ethics unreasonably if such enforcement would result in economic injury to certain members. Further, PTG must give a member due process before taking any significant disciplinary action against the member.

Boycotts. Members cannot use trade associations as a tool to suppress competition by refusing to deal with nonmembers, or refusing to deal with those who deal with nonmembers. Accordingly, PTG and its members must

not enter into any agreements to refuse to deal with certain competitors, customers, or suppliers.

Information Exchanges. Associations, such as PTG, may conduct economic surveys and exchange information regarding costs and how to accurately determine the cost of doing business. “Price surveys” of current prices or charges are prohibited. Any survey that collects current data on revenues on an item-by-item, product-by-product, or service-by-service basis creates major antitrust issues and must be reviewed by counsel prior to circulation.

- 2) According, participants at association meetings, whether they be formal or informal meetings of the membership, the governing board, officers, committees, or subcommittees, must be made aware that discussion of certain subjects raise grave antitrust dangers and therefore must be avoided. Ordinarily association meetings should avoid discussions of the following issues lest an understanding or agreement on the subjects, expressed or implied, be effected and subsequently challenged as violating antitrust or consumer protection laws. There must be no discussions at association meetings that may in any way tend to: a) raise, lower, or stabilize prices or fees, b) regulate schedules, c) affect the availability of products or services, d) allocate markets, territories, or customers, e) encourage boycotts or exclusions of products or services, f) foster unfair practices involving advertising, merchandising, standardization, certification or accreditation, g) encourage anyone to refrain from competing, h) limit or exclude anyone from manufacture, sale, or practice, i) result in illegal brokerage or rebates, j) affect improper reciprocity in dealing, or k) regulate current or future prices. In addition, there should be no discussion of what constitutes a fair profit or margin level, possible increases or decreases in prices, standardization or stabilization of prices, pricing procedures, refusal to deal with a firm because of its pricing or distribution practices, whether or not the pricing practices of any industry member are unethical or constitute an unfair trade practice, market share, customer or supplier classification, allocation or selection, decisions to quote or not to quote, or sales territories.
- 3) Other topics lead to antitrust and trade regulation issues that are complex and have long series of court and agency decisions and opinions relating to them, but are not per se illegal. These areas include membership restrictions, categories, and termination; membership services to nonmembers; trade show restrictions; business or professional codes; statistical programs; cost programs; standardization and simplification; product certification; professional restrictions and credentialing; joint research; credit reporting; and group buying. Each of these areas has separate antitrust implications so should be discussed only with advice of counsel.
- 4) From a positive point of view, ordinarily there can be appropriate discussions at association meetings that have as a purpose or result: a) reporting on

general industry or profession economic trends, b) describing advances or problems in relevant technology or research, c) demonstrating methods by which an individual or firm can become more profitable by acquiring better knowledge of its own costs, d) summarizing effective methods of purchasing, manufacturing, and marketing, e) educating about various aspects of the science and art of management, f) considering industry or profession relations with local, state, or federal governments, g) reporting or experiences and developments in employment relations, h) relating efforts toward improvement of products, i) developing ways to respond to consumer or environmental issues and j) effecting energy use and supply.

Because the area of antitrust and consumer protection laws is so important, the discussions held at PTG meetings justifies constant and intense monitoring by legal counsel experienced in antitrust implications of association policies and programs. The ramifications of antitrust laws and trade regulations are subtle and dynamic. They are not necessarily avoided merely by avoiding discussion in the areas indicated in this policy. It is therefore PTG policy to have counsel review agendas and minutes for meetings to guide and assist PTG on what are appropriate and inappropriate subjects for discussions at meetings.