

## AVIXA

### ANTITRUST REMINDERS AND MEETING GUIDELINES<sup>1</sup>

The policy of AVIXA (herein referred to as “AVIXA” or the “Association”) is to comply fully and strictly with U.S. and foreign antitrust laws. This policy is motivated by a firm respect for the antitrust laws and the free market philosophy underlying these laws as well as the potentially severe detrimental consequences of antitrust violations. Our aim is to conduct ourselves in such a way as to avoid any potential for antitrust exposure in the first instance.

Group activities of competitors are inherently suspect under the antitrust laws. Many agreements and activities among competitors, however, are both legal and beneficial to society and industry. Accordingly, AVIXA and its members must ensure that the Association and its various programs are used only to fulfill the mission of the Association, and not to restrict competition in any way, or even create the appearance of doing so. The following guidelines apply to all members whenever engaged in Association activities, whether at formal or informal meetings or during informal or social contacts with other members. It is expected that all member representatives involved in the activities of AVIXA, as well as AVIXA staff, consultants and meeting participants will be sensitive to the legal issues involving trade associations and take all measures necessary to comply with the U.S. antitrust laws and similar foreign competition laws.

#### Prohibited Discussions

Whether seriously or in jest, do not discuss or exchange information regarding:

Prices, including:

- Individual company prices, price changes, price differentials, pricing patterns or policies, terms and conditions of sale affecting price such as discounts, allowances, credit terms, warranties, rebates, special financing, or indemnification agreements.
- Industry pricing policies, price levels, price changes, pricing procedures, profit margins or other data that bear on price.
- Individual company data on costs, production capacity, inventory, sales, profit margins or other data that bear on price.

Production, including:

- Individual company plans concerning the design, production, distribution or marketing of particular products or product features, including possible or proposed customer territories.
- Agreements with competitors (1) to control or limit production, (2) restrict or allocate exports or imports, (3) control or limit product quality or research, or (4) allocate sales according to customers, territories or products.

Marketing Procedures, including:

- Matters relating to dealing or not dealing with actual or potential individual suppliers or competitors that might exclude them from the market.
- Territorial restrictions, allocations of customers, restrictions on types of products or any other kind of market division.
- Bid rigging, bid rotation, or otherwise distorting the bid process.

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<sup>1</sup> Updated effective September 13, 2017

## **Certification and Standard Setting**

- While certification and standard setting can serve valuable procompetitive purposes, programs that unreasonably further the interests of certain members to the exclusion of others may raise antitrust concerns. Any certification or standard setting program should be based on sound, objective justifications; reasonably related to the goals it is intended to achieve; no more extensive than necessary to accomplish those goals; and incorporate reasonable procedural safeguards to ensure that participants are not arbitrarily discriminated against.

## **Public Policy Advocacy / Lobbying**

- Under the *Noerr-Pennington* doctrine of antitrust immunity, joint action by an association or groups of competitors to influence government policy generally does not violate the antitrust laws. This doctrine generally includes legislative activity, litigation in the courts, and proceedings before administrative bodies, which are protected under the First Amendment to the Constitution. However, seeking government action in order to injure a competitor directly – rather than as a result of the government action – is not protected by this immunity. In addition, under certain circumstances there is no immunity if a company makes false or misleading statements when it petitions the government.

This list is not exhaustive and understanding and acting in compliance with U.S. and foreign antitrust laws sometimes can be difficult. Full compliance with the antitrust laws is a requirement for AVIXA membership, and responsibility for compliance rests with each member. If you have any questions about the propriety of AVIXA activities or discussions in an AVIXA meeting you are encouraged to contact AVIXA counsel or your company's legal counsel. Violations of antitrust laws can result in criminal and civil penalties and liability for the companies and individuals involved.

## Summary of Antitrust Do's and Don'ts

The following are some of the most critical “**Do's and Don'ts**” for antitrust compliance:

### **DON'Ts:**

- **DON'T** discuss prices, fees, or rates, or features that can impact (raise, lower, or stabilize) prices, fees, or rates such as discounts, costs, salaries, terms and conditions of sale, warranties, or profit margins.
- **DON'T** share competitively sensitive information (such as data concerning prices, fees, or rates) unless the exchange is made pursuant to a well-considered plan that has been approved by AVIXA's legal counsel.
- **DON'T** discuss what is a fair, appropriate, or “rational” price or profit margin for suppliers or other business partners.
- **DON'T** agree with competitors as to uniform terms of sale, services, coverage, or contract provisions.
- **DON'T** agree with competitors as to restrictions on services or coverage.
- **DON'T** agree with competitors to divide customers, markets, or territories.
- **DON'T** agree with competitors not to deal with certain suppliers, customers, vendors, or others.
- **DON'T** try to prevent a supplier from selling to your competitor(s).
- **DON'T** discuss your customers with your competitors.
- **DON'T** agree to any membership restrictions, standard-setting, certification, accreditation, or self-regulation programs without consultation and approval by AVIXA's legal counsel.

### **DOs:**

- **DO** insist that AVIXA meetings have agendas that are circulated in advance, and that minutes of all meetings properly reflect the actions taken at the meeting.
- **DO** leave any meeting (formal or informal) where improper subjects are being or will be discussed. Tell everyone why you are leaving.
- **DO** ensure that only AVIXA staff sends out written and electronic correspondence on behalf of AVIXA and that AVIXA officers, directors, committee members, or other members do not hold themselves out as speaking or acting with the authority of AVIXA unless they do, in fact, have such authority.
- **DO** seek legal advice from your own counsel or from AVIXA's legal counsel if you have questions regarding the antitrust laws or your responsibilities under these laws.