



COORDINATING RESEARCH COUNCIL, INC.

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Antitrust Compliance Manual of the Coordinating Research Council, Inc.

INTRODUCTION.

This brochure sets forth the Coordinating Research Council's ("CRC") policy for compliance with the antitrust laws and rules of conduct which govern all CRC activities for the purpose of ensuring CRC's continued compliance with the antitrust laws. These policies and rules of conduct are intended to accomplish two objectives: (1) to make the occurrence of an actual antitrust violation in the course of CRC activities impossible and (2) to prevent inadvertent conduct which might give the appearance of an antitrust violation to someone unfamiliar with CRC's functions and purposes. They are designed to protect you, your employer and CRC from any accusation of wrongdoing arising out of your participation in CRC activities.

Accomplishment of these objectives is everyone's responsibility. We urge you to keep this brochure handy and to refer to it whenever you have any question about the antitrust implications of any activity you might undertake under the auspices of CRC.

Any questions you or your company's legal counsel may have concerning CRC's antitrust compliance program should be directed to Brent K. Bailey, Executive Director, Coordinating Research Council, Inc., 3650 Mansell Road, Suite 140, Alpharetta, Georgia 30022.

STATEMENT OF ANTITRUST POLICY.

CRC is organized to promote scientific cooperative research in the fields of fuels, lubricants, and the equipment in which those products are used. CRC is not intended to, and may not, play any role in the competitive decisions of its participants or in any way restrict competition in the fuel, lubricant or equipment industries.

Through its technical committee structure, cooperative research programs and other activities, CRC brings together representatives from the energy and automotive industries. Although the subject matter of CRC activities is technical research and although there is no intent on the part of CRC to restrain competition, CRC's Board of Directors recognizes the possibility that CRC and its activities could be seen by some as an opportunity for anti-competitive conduct. For this reason, the Board has taken the opportunity, through this statement, to make clear its unequivocal support for the policy of competition served by the antitrust laws and its uncompromising intent to comply in all respects with those laws.

In addition, the penalties which may be imposed upon both CRC and its participants as a result of any violation of the antitrust laws are so severe that good business judgment demands that every effort be made to avoid any antitrust violation. Certain violations of the Sherman Act, such as price fixing, are felony crimes for which individuals may be imprisoned for up to three years or fined up to \$350,000, or both, and corporations, such as CRC, can be fined up to \$10 million for each offense. In addition, treble damage claims by private parties (including class actions) for antitrust violations are extremely expensive to litigate and may result in very large judgments or settlements against CRC and the companies that participate in its activities. Because of these considerations, it is the responsibility of every participant in CRC to be guided by CRC's policy of strict compliance with the antitrust laws in all CRC activities.

Because compliance with the antitrust laws is the responsibility of every CRC officer, director, employee and participant, the Board furnishes CRC's officers, directors, employees and others that participate in CRC activities with a copy of this brochure in order to assist them in recognizing situations which may raise the appearance of antitrust problems.

OVERVIEW OF THE ANTITRUST LAWS.

The principal antitrust laws are the Sherman Act, the Clayton Act, the Federal Trade Commission Act and the Robinson-Patman Act. There are also a number of other statutes which set forth special prohibitions, regulations and exemptions from the antitrust laws which do not apply to the day-to-day activities of CRC. In addition, many states have their own antitrust statutes which, for the most part, closely follow the principal federal antitrust laws.

THE SHERMAN ACT.

The Sherman Antitrust Act prohibits both unreasonable restraints upon and monopolization of trade.

Section 1 - Contracts, Combinations and Conspiracies in Restraint of Trade.

Section 1 of the Sherman Act is the most important and most frequently applied of all of the antitrust laws. It provides in part: *Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is declared to be illegal.*

Section 1 applies if the following three conditions are met:

First, Section 1 applies if there is a contract, combination or conspiracy. It is, therefore, necessary for two persons or entities to agree or to act in concert for there to be a violation of Section 1. The contract, combination or conspiracy need not be formal or written; often, a "knowing wink" or a consistent, parallel course of conduct between competitors is sufficient to form a basis for an illegal agreement.

Second, Section 1 applies if the contract, combination or conspiracy is in restraint of interstate or foreign commerce.

Third, Section 1 applies if the contract, combination or conspiracy is an "unreasonable" restraint on "competition." Experience has revealed that some restraints such as price fixing are always unreasonable; other restraints, such as assigning distributors specific marketing territories, are examined on their facts to determine their reasonableness.

Certain practices are called *per se* offenses and are always viewed as violations of the Sherman Act. Individuals can be imprisoned for three years or fined up to \$350,000, or both, and corporations can be fined up to \$10 million for *per se* offenses. *Per se* offenses include:

- price fixing with competitors;
- division or allotment of sales or customers with competitors;
- division of territories with competitors;
- agreements with competitors to limit production;
- group boycotts - agreements with competitors not to buy from or sell to other companies.

Trade, professional and educational associations perform many necessary and legitimate functions. However, because meetings of those types of associations frequently provide the opportunity for contacts among direct competitors, it is important that any hint of conduct that might constitute one of these *per se* offenses be avoided.

Section 2 - Monopolization.

Section 2 of the Sherman Act states:

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several states, or other foreign nations, shall be deemed guilty of a felony.

Section 2 does not prohibit a company from being large or having a dominant position in a market. What is prohibited is the exercise of power to control the prices in or to foreclose access to a market. Markets are defined in terms of both product markets and geographic markets. Both types of markets may be narrowly drawn to apply to specific product lines or to small geographic territories.

THE CLAYTON ACT.

The Clayton Act is a more detailed and specific statute than the Sherman Act. For the most part, the Clayton Act's prohibitions, such as those against certain mergers and interlocking directorates, do not apply to organizations such as CRC. The Clayton Act does, however, contain general prohibitions against a company's conditioning the sale of a product upon the buyer's agreement (1) to accept another item sold by the seller (to "tie" the sale of one product to the sale of another) or (2) not to buy products from competitors of the seller.

THE FEDERAL TRADE COMMISSION ACT.

The Federal Trade Commission Act ("FTCA") is a broadly worded statute that prohibits "unfair or deceptive" trade practices. The FTCA gives to the Federal Trade Commission and the courts adequate power to deal with most forms of trade restraints which are prohibited by the Sherman Act. For example, price fixing is also covered by the FTCA. The FTCA goes even further, however, and permits the Federal Trade Commission to proceed against conduct which might develop into a violation of the Sherman Act.

ROBINSON-PATMAN ACT.

This statute seeks to promote competition by prohibiting certain types of discrimination in price and related areas. These are areas in which CRC is not involved, and application of the Robinson-Patman Act to CRC's activities should be rare.

ENFORCEMENT OF THE ANTITRUST LAWS.

The federal government can proceed against suspected antitrust violations through criminal suits, civil actions or administrative proceedings.

As previously noted, individuals may be sentenced to jail for up to three years and fined up to \$350,000, and corporations may be fined up to \$10 million for criminal violations of the Sherman Act. In the case of hard core antitrust violations such as price fixing, the Antitrust Division regularly obtains jail sentences of at least six months for individuals and corporate fines that approach the maximum allowed.

Civil actions may also be brought by the Antitrust Division and administrative proceedings by the Federal Trade Commission depending upon the specific statutes and conduct involved.

Private persons are also permitted to sue alleged antitrust violators for treble damages, injunctions and their attorneys' fees. Huge recoveries in treble damage actions have been obtained in unlikely cases. Further, the magnitude of the potential liability which trebling provides frequently forces defendants, even when they believe their conduct was entirely lawful, to settle cases without the risk of going to trial.

JUSTICE DEPARTMENT GUIDELINES FOR JOINT RESEARCH ACTIVITIES.

The Antitrust Division of the Department of Justice has published an "Antitrust Guide Concerning Research Joint Ventures" which states that joint research efforts conducted in accordance with the following principles are normally legal:

- "Reasonable ancillary restraints" may be imposed which are necessary to the principal lawful purpose of the joint research, e.g., a commitment of a certain amount of a company's research resources or manpower.
- Results of related research undertaken previously by the participating companies may be exchanged.
- Independently gathered technical information directly relevant to the success of the project, even if developed during the time of the joint research, may also be exchanged.
- Different aspects of the joint research may be divided among the participants.

The Guide states that to the extent antitrust issues arise in the joint research field, those issues most often occur because: *joint research may involve or create market-dominating technology, may be conducted by competitors or potential competitors, or may involve restrictive agreements concerning the use of the research.*

Types of joint research activities which probably will be viewed as *illegal* by the Antitrust Division include the following:

- Restrictions on development of individual research.
- Unnecessary restrictions on production and marketing of inventions which result from the joint research.
- The exchange of confidential information, such as information relating to cost of productions or other similar matters, that is not necessary to the joint research endeavor.
- Agreements which are in fact designed to thwart research rather than to promote it.
- Any agreement that limits the introduction of new products or discontinues old products that compete with products of joint research.
- Any agreement to pool patents not reasonably necessary to the operation of the joint venture.
- An overall pattern of restrictive agreements that has anti-competitive purposes or effects.

It seems clear that CRC falls well within the Antitrust Division's guidelines for joint research activities, since CRC places no restraints on either other research activities conducted by its members and participants or the uses to which the results of CRC's research are put. In fact, it is CRC's policy to publish the results of all research done under its auspices and to dedicate to the public all patents which CRC obtains. Further, a special case exists when companies engage in joint research that assists them in complying with government standards that regulate externalities, such as air pollution, which are caused by firms in a number of different industries. The Guide views joint research involving firms in the industries affected by government regulations as a natural response to a common concern and therefore more clearly permissible under the antitrust laws. While the joint research must be structured in such a way that the participants may not slow the pace of research or intentionally fail to meet government standards, these dangers are minimized in an inter-industry joint research program, such as CRC, which involves a number of industries that are affected by the regulations.

GENERAL RULES FOR ANTITRUST COMPLIANCE IN CONNECTION WITH CRC FUNCTIONS.

The following rules are applicable to CRC activities and must be observed in all situations and under all circumstances without exception or qualification other than as noted below.

- CRC, CRC's committees, and any activity sponsored by CRC shall not be used for the purpose of bringing about or attempting to bring about any understanding or agreement, written or oral, formal or informal, express or implied, among competitors with regard to prices, terms or conditions of sale, distribution, volume of production, territories or customers.

- No CRC activity shall include discussion of prices or pricing methods, restrictions on output, allocation of territories or customers, or confidential technical or business information of the participants' employers.
- CRC shall not undertake any activity which involves exchange or collection and dissemination among competitors of any information regarding prices or pricing methods.
- CRC shall not undertake to collect individual firm cost data, including costs of proprietary research, or to disseminate any compilation of such data, without prior approval of legal counsel provided by CRC.
- Scientific papers published by CRC or presented in connection with CRC's programs may refer to costs, provided such references are not accompanied by any suggestion, express or implied, to the effect that prices should be adjusted or maintained in order to reflect such costs. All papers containing cost information must be reviewed by CRC's legal counsel for possible antitrust implications prior to publication or presentation.
- The recommendation of industry standards may present special antitrust problems to many joint research organizations because the recommendation of certain standards may have the unintended result of excluding certain competitors from a market. While CRC does not develop or recommend product standards or specifications, CRC does oversee numerous research projects. Many of these research projects require the use of uniform materials in order to assure the validity of testing results. Because it is impossible to attain the essential degree of product uniformity on a specification basis if materials come from more than one source—and therefore impossible to insure the scientific validity of the test results—CRC often finds it necessary to specify only one source of supply for materials used in tests conducted under CRC's auspices. Subject to this limitation, which is essential to CRC's legitimate purposes, the following rules apply:
 - No CRC activity or communication shall include any discussion which might be construed as an attempt to prevent any person or business entity from gaining access to any market or customer for goods or services, to prevent any business entity from obtaining a supply of goods or otherwise purchasing goods or services freely in the market, or to recommend or endorse particular goods or services.
 - No CRC activity or communication shall include any discussion of costs for the purpose or with the probable effect of promoting agreement among competing firms with respect to their selection of products other than materials used in cooperative research.
 - CRC shall not make any effort to bring about the standardization of any product for the purpose or with the effect of preventing the manufacture or sale of any product not conforming to a specified standard.
 - No person shall be unreasonably excluded from participation in any CRC activity where such exclusion may impair that person's ability to compete effectively.
 - All CRC participants, directors, officers and employees are expected to comply with these guidelines and the antitrust laws in informal discussions at CRC meetings as well as in formal CRC activities.

DO'S AND DON'T'S FOR CRC MEETINGS AND OPERATIONS.

DO prepare and distribute the agenda for all meetings.

DO prepare minutes of all meetings.

DO stop any conversation which appears to be leading to:
 discussion of prices or pricing policy;
 other clear restraints on competition of any kind.

DO advise all meeting attendees to observe the General Rules of Antitrust Compliance in informal conversations as well as formal CRC activities.

DO seek committee members who possess technical capability in the area covered by the committee and who are willing to participate actively in committee work.

DO NOT undertake any committee activity involving collection or dissemination of prices or pricing methods.

DO NOT undertake any committee activity involving collection of individual firm cost data or dissemination of any compilation of such data without prior approval of CRC's legal counsel.

DO attempt to keep committee size reasonable in order to promote efficiency but without placing numerical limits on the size of the committee that unreasonably restrict participation in the committee.

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