American Gas Association

Antitrust and You:

Antitrust Compliance Procedures

Objective

The American Gas Association (AGA) and its member companies are committed to full compliance with all laws and regulations, and to maintaining the highest ethical standards in the way we conduct our operations and activities. Our commitment includes strict compliance with federal and state antitrust laws, which are designed to protect this country's free competitive economy.

Responsibility for Antitrust Compliance

Compliance with the antitrust laws is a serious business. Antitrust violations may result in heavy fines for corporations, and in fines and even imprisonment for individuals. While the General Counsel's Office provides guidance on antitrust matters, you bear the ultimate responsibility for assuring that your actions and the actions of any of those under your direction comply with the antitrust laws.

Antitrust Guidelines

In all AGA operations and activities, you must avoid any discussions or conduct that might violate the antitrust laws or even raise an appearance of impropriety. The following guidelines will help you do that:

- ***Do*** consult counsel about any documents that touch on sensitive antitrust subjects such as pricing, market allocations, refusals to deal with any company, and the like.
- ***Do*** consult with counsel on any non-routine correspondence that requests an AGA member company to participate in projects or programs, submit data for such activities, or otherwise join other member companies in AGA actions.
- ***Do*** use an agenda and take accurate minutes at every meeting. Have counsel review the agenda and minutes before they are put into final form and circulated and request counsel to attend meetings where sensitive antitrust subjects may arise.
- ***Do not, without prior review by counsel,*** have discussions with other member companies about:
  - your company's prices for products, assets services, or prices charged by your competitors.
  - costs, discounts, terms of sale, profit margins or anything else that might affect those prices.
  - the resale prices your customers should charge for products or assets you sell them.
  - allocating markets, customers, territories products or assets with your competitors.
  - limiting production.
  - whether or not to deal with any other company.
  - any competitively sensitive information concerning your own company or a competitor's.
- ***Do not*** stay at a meeting, or any other gathering, if those kinds of discussions are taking place.
- ***Do not*** discuss any other sensitive antitrust subjects (such as price discrimination, reciprocal dealing, or exclusive dealing agreements) without first consulting counsel.
- ***Do not*** create any documents or other records that might be misinterpreted to suggest that AGA condones or is involved in anticompetitive behavior.

We're Here to Help

Whenever you have any question about whether particular AGA activities might raise antitrust problems, contact the AGA General Counsel's Office at (202) 824-7072 or GCO@aga.org, or your legal counsel.

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AGA Antitrust Compliance Procedures

I. Introduction

It is the policy of the American Gas Association (AGA) and its member companies to comply strictly with all laws, including federal and state antitrust laws that apply to AGA operations and activities. Compliance with the letter and spirit of the antitrust laws is an important goal of AGA and is essential to maintaining AGA's reputation for the highest standards of ethical conduct.

The procedures discussed below formalize AGA's continuing antitrust compliance program and are to be observed by each of you – AGA officers and employees, AGA member company representatives and other persons – who may be involved in any way in AGA's operations and activities. While the AGA General Counsel's Office has been assigned to oversee AGA's antitrust compliance program, the program cannot work unless each of you does your part.

II. The Antitrust Laws: A Basic Framework

Antitrust laws are designed to promote vigorous and fair competition and to provide American consumers with the best combination of price and quality. These procedures focus mainly on the federal antitrust and trade regulation laws created by the Sherman Act, Clayton Act, Robinson-Patman Act and Federal Trade Commission Act. Most states and the District of Columbia have their own antitrust laws, which frequently (although not always) parallel the federal laws. Many countries in which AGA may conduct activities also have similar antitrust laws.

The U.S. Department of Justice is authorized to prosecute Sherman Act violators as criminal felons, who may be severely fined and, in the case of individuals, imprisoned. In addition, the Justice Department, state attorneys general and private parties may bring civil suits and recover three times (treble) their actual damages, court costs and (in private suits) their attorneys' fees from corporations and individuals who have violated the federal antitrust laws. The Federal Trade Commission has its own statutory authority to enforce antitrust laws through civil and administrative proceedings.

III. Possible Antitrust Violations to Avoid

1. Agreements That Restrain Competition – Section 1 of the Sherman Act

The most common antitrust violations of which you should be aware fall within Section 1 of the Sherman Act. They result from agreements – typically with competitors, customers or suppliers – that unreasonably restrain competition. Thus, the antitrust laws prohibit AGA and its member companies from agreeing to do certain things that they could legally do if they acted independently.

Any type of agreement, understanding or arrangement between competitors – whether written or oral, formal or informal, express or implied – that limits competition is subject to antitrust

scrutiny. Moreover, any attempt to reach such an agreement may be unlawful, even if it is unsuccessful.

2. Some Troublesome Agreements

The courts have found that certain types of agreements always (or almost always) violate the antitrust laws. These give rise to "per se" violations. They frequently include agreements of the kinds discussed here.

Price-Fixing and Bid-Rigging Agreements
Any agreement between competitors on prices charged to others for products, assets or services violates the antitrust laws. Every direct price-fixing agreement is illegal, whether it is meant to raise, lower or just stabilize prices. Agreements may be illegal as well even if they only indirectly affect prices because they involve such things as discounts, promotional allowances, standardization of customer or delivery services, and uniform credit terms and billing practices. It is also illegal for competitors to agree on the prices they will pay for products or services sold by other persons, or to engage in collusive bidding practices (or bid-rigging).

Resale Price Agreements
Although pertinent Supreme Court authority has undergone some changes in 2007, agreements between a seller and a customer on the price at which the customer will resell a product or asset (e.g., pipeline capacity) are still frequently illegal. The seller may, however, suggest a resale price so long as it is completely clear that the customer is free to accept or reject the suggestion and will not be penalized if it decides to disregard the suggestion.

Agreements to Allocate Markets, Customers, Territories or Products
It is illegal for competitors to agree to divide or allocate customers or territories. An agreement among competitors is also illegal if it provides that they will refrain from selling a certain product generally, or in any geographic territory or to any category of customer.

Group Boycotts and Collective Refusals to Deal
Agreements among independent concerns that they will boycott or refuse to buy from particular suppliers or sell to particular customers are generally prohibited by the antitrust laws. This does not necessarily preclude sharing certain information about a company (e.g., concerning its credit history) so long as there is no discussion on whether to deal with that company.

Agreements to Control Production
Agreements among competitors to increase or restrict services or production levels are always problematic under the antitrust laws. The same is true of agreements among competitors to limit the quality of production, restrict the products or services sold to a particular customer, refrain from introducing new products and services or eliminating old ones, or accelerate the introduction or withdrawal of a product or service.

Tying Arrangements
A "tie-in" or "tying" arrangement permits a buyer to purchase one (tying) product or service only if it agrees to buy a second, distinct (tied) product or service from the seller. This might happen,

for example, if a utility were to refuse to sell natural gas to a manufacturer unless the manufacturer also purchased proprietary software owned by the utility. These types of agreements should be avoided.

Activities That Illegally Restrain Competition

AGA operations and activities must not be used to reach or further agreements among member companies (or other persons) in any of the following areas:

- AGA's or member companies' prices for products, assets or services
- The prices at which products, assets or services should be resold
- Allocations of markets, customers, territories or products
- Collective refusals to deal with someone
- Limitations on production
- Tying arrangements

To avoid even the appearance of impropriety, the subjects indicated above must not be discussed or addressed in the course of any AGA-related operations, events or other activities without the prior approval of counsel.

3. Other Types of Agreements That Also May Raise Concerns Under the Antitrust Laws

Here are some examples – though not a complete list – of agreements whose legality depends on the circumstances involved:

Exclusive Dealing

Exclusive dealing arrangements come in various forms. Some might require a customer to sell exclusively the products of a particular company or coerce a supplier into refusing to sell to its customer's competitors. Others might compel a customer to purchase all of its requirements for a particular product or service from a single supplier.

Reciprocity

In a reciprocal dealing arrangement, a customer makes purchases from a supplier only on the condition that the supplier will buy products or services from the customer. Such reciprocal arrangements are particularly troublesome when one of the parties is openly or implicitly coerced.

Product Standardization

Competitors may create lawful agreements to establish industry product standards. Those agreements may cause problems under the antitrust laws, however, if they have an

anticompetitive effect (e.g. where standardization makes it easier for competitors to set common prices).

Activities That Also May Be Illegal, Depending on the Circumstances

AGA operations and activities must not be used to reach or further agreement among member companies (or other persons) in any of the following areas without prior approval of counsel:

- Exclusive dealing arrangements
- Reciprocal sales and purchase agreements
- Product standardization

To avoid even the appearance of impropriety, the subjects indicated above must not be discussed or addressed in the course of any AGA-related operations, events or other activities without the prior approval of counsel.

4. Other Conduct That May Violate the Antitrust Laws Even Without an Agreement of Any Type

You should also be aware of antitrust law violations that may take place even where there is no agreement among competitors or anyone else. The most common violations of that type are briefly discussed here.

Monopolization

The law of monopolization (including attempts to monopolize and agreements to monopolize) is extremely complicated. Basically, when any enterprise enjoys a strong market position for a particular product, it should be concerned about questions of monopolization. The law of monopolization often comes into play in mergers or acquisitions for companies that actually compete or could compete with each other. No enterprise should take actions that might be viewed as evidence of an intent to acquire or maintain monopoly power in a particular market, to drive a particular competitor out of business or to prevent somebody from entering the market.

Price Discrimination

The Robinson-Patman Act and some state antitrust laws restrict a seller from charging different prices for its goods to competing customers at the same point in time. Those laws also forbid sellers in certain circumstances from discriminating when they offer promotional materials, services or other inducements to individual customers in an effort to have the customers engage in in-house promotions or advertising. Buyers, in turn, are prohibited from knowingly inducing or receiving a discriminatory price, promotional allowance or service. These general prohibitions have a number of exceptions, which are too complex to be discussed here.

Unfair Competition
The Federal Trade Commission Act (FTC Act) prohibits all "unfair methods of competition" and "unfair or deceptive acts or practices." The FTC Act covers antitrust violations like those discussed above, but also forbids conduct that falls short of those violations. The FTC Act prohibits all forms of deceptive or misleading advertising and trade practices, such as disparaging a competitor's product, harassing a customer or competitor, and stealing trade secrets and customer lists.

Contact legal counsel for advice on any situations potentially involving:

- Attempts to eliminate competition
- Price discrimination
- Advertising of products and services
- Potentially unfair business practices (e.g., acquiring customer lists).

IV. Antitrust Matters of Particular Interest to Trade Associations

A number of antitrust cases against trade associations have focused on situations that go to the heart of what those organizations are about.

Membership

Because a trade association by its very nature provides certain commercial and other benefits to its members, the denial of membership to qualified competitors of the members could violate antitrust laws. Membership should be open to all companies that satisfy basic membership requirements, and any decision to deny membership or expel a member company should be reviewed with counsel. All member companies should have an equal opportunity to participate in AGA activities and benefits. In addition, certain programs and activities may need to be opened to nonmember companies if their exclusion would put them at an unreasonable competitive disadvantage to member companies.

Collection and Dissemination of Data

Statistical data may obviously be compiled for legitimate purposes. Statistical information also may cause problems from an antitrust standpoint, however, if their use somehow harms competition. This might happen, for instance, if statements in AGA publications were to suggest what specific product, prices, storage levels or market demand should or would be in the future. Broadly speaking, the farther removed the data are from prices and costs, the less company-specific they are, the more historical they are, and the wider their public dissemination is, the less likely it is that they will raise antitrust problems. As a general rule, particular market-sensitive

data supplied by individual member companies should never be discussed or disseminated without advice of counsel.

Codes, Standards and Certification Programs

Reasonable industry codes, standards and certification programs may promote quite valid interests, including the protection of safety, health and the environment and the maintenance of high standards of ethics and conduct. You should nonetheless be alert for anticompetitive effects that a particular standard may have. For example, a product standard that is unreasonably biased in favor of one manufacturer's product at the expense of another's may raise significant antitrust problems. Care should therefore be used both in creating and applying codes, standards and certification criteria, and in influencing other organizations as they do so.

Marketing and Communications

Like the other activities discussed above, marketing and communications serve valid interests, but can raise antitrust problems under some circumstances. Be careful that all advertising, announcements and other communications that might affect competition are accurate and are in no way deceptive or misleading. Cooperative advertising programs may be suspect if they discriminate and benefit certain companies at the expense of their competitors.

Government Relations

There is a constitutional right to petition legislatures and government agencies for action and, if properly undertaken, such activity is not subject to the antitrust laws. The right to petition, however, does not provide unlimited antitrust protection. If the activity in question is not really designed to achieve government action but rather amounts to a sham used to injure competition, for example, it may raise serious antitrust problems. Moreover, activities are not immunized from the antitrust laws simply because a government representative encourages and happens to participate in them.

V. Some Practical Guidelines on Preventing Problems at Meetings, in Records and in Contacts with Others

Meetings, communications and contacts that touch on antitrust matters present special challenges. A simple example will illustrate this. Suppose that competitors were to discuss their prices at a meeting or in a document, and that their prices increased shortly afterward. A jury might view this as evidence that their discussions led to an agreement on pricing, and thus violated the antitrust laws. In a case like that, the mere appearance of illegality – even when the parties may in fact have done nothing wrong – can cause serious problems. The guidelines that follow are designed to help you not only comply with the antitrust laws, but also avoid even the appearance of impropriety.

Meetings

AGA meetings regularly bring together representatives of member companies that are potential or actual competitors. It is important, therefore, that certain ground rules be followed to eliminate any suspicion that a particular meeting might be used for anticompetitive purposes:

- **Do** prepare an agenda, and have AGA counsel review it before the meeting.
- **Do** provide a copy of "American Gas Association Antitrust Compliance Guidelines" to every participant at the meeting.
- **Do** have an AGA staff member attend the meeting.
- **Do** invite legal counsel to attend if the meeting might involve matters having to do with sensitive antitrust subjects.
- **Do** follow the agenda at your meeting, with departures from the agenda only if counsel approves.
- **Do** keep accurate minutes, and have counsel review them before they are put into final form and circulated.
- **Do not** discuss any subjects that might raise antitrust concerns (including prices, market allocations, refusals to deal, and the like) unless you have received specific clearance from counsel in advance. If someone begins discussing a sensitive subject, **do not** allow the discussion to continue. If the discussion does continue, **do not** allow the meeting to continue.

When member company representatives get together and talk before or after formal meetings, there should be no discussions that raise antitrust concerns even in such informal settings.

Records

When we talk about "records," we are referring to any of the various communications people record in some tangible form every day – in documents, e-mail, videotapes, audio recordings (such as voice mail) and the like. These records are sometimes inaccurate, often less precise or artful than we would like, and all too frequently subject to misinterpretation. You should prepare every record with the thought that it might someday have to be produced to government officials or plaintiffs' lawyers, who will interpret your language in the worst possible way. The following guidelines may help you avoid problems in matters involving competition:

- **Do** avoid creating unnecessary records.
- **Do** use language that is clear, simple and accurate.
- **Do** avoid language that might be misinterpreted to suggest that AGA condones or is involved in any anticompetitive behavior.
- **Do,** as much as possible, limit yourself to facts and avoid offering opinions.
- **Do** not use joking or aggressive language (e.g., "Let's kill our competitors").
- **Do not** use language that might arouse suspicion (e.g., "For limited distribution" or "Destroy after reading").
- **Do not** speculate about the legality of specific conduct.
- **Do not** keep records longer than necessary for business or legal purposes.
- **Do not** hesitate to consult counsel about any nonroutine correspondence requesting an AGA member company to participate in projects or programs, submit data for such activities or otherwise join other member companies in AGA actions.

Outside Contacts

Whenever you have contact with outside parties on antitrust matters, always keep in mind that even completely innocent behavior may be misinterpreted. If a government representative, a private attorney or investigator, or any other outside person contacts you for information that

might relate in some way to antitrust subjects, tell that person that you are not authorized to provide the information but will have an authorized person respond. You should then immediately contact legal counsel.

VI. Responsibility for Compliance, Monitoring and Enforcement

Responsibility for Antitrust Compliance

While the General Counsel's Office will provide guidance on antitrust matters, furnish training as appropriate and answer questions, it is ultimately your responsibility to ensure that your actions with AGA comply with the antitrust laws. You are expected to avoid all discussions and activities that may involve improper subject matter or procedures – and this includes such things as agreeing on prices, on how to allocate markets or customers, on placing limits on production, and on refusing to deal with certain suppliers or customers – and to avoid even the appearance of impropriety.

Communicating Antitrust Policy and Procedures

The General Counsel's Office and the Human Resources Department will distribute a copy of these procedures to each AGA officer and employee. AGA committee staff executives will assist in providing copies of these procedures to AGA member company representatives whose responsibilities with AGA might require knowledge of the antitrust laws. They are also available in Outlook (Public Folders, Legal Information) and on AGA's website (www.aga.org).

The General Counsel's Office, in conjunction with the Human Resources Department and others, will make presentations as appropriate on compliance with the antitrust laws to AGA employees and to AGA member company representatives to the extent their activities might bear on AGA's compliance with the antitrust laws. In addition, all AGA officers and employees and AGA member company representatives are encouraged to contact the General Counsel's Office at any time with questions they may have concerning antitrust compliance.

Compliance Monitoring and Enforcement

The General Counsel's Office and Human Resources Department will monitor and audit AGA operations and activities as appropriate to ensure compliance with these procedures and the antitrust laws in general. They also will promptly investigate any conduct that is reported or otherwise suspected to violate the antitrust laws. Any such violations may result in immediate disciplinary action, up to and including termination of employment (for AGA employees).

AGA recognizes that its own employees are an important source of information about possible antitrust violations in connection with AGA's activities. It therefore requires that employees promptly report any suspected violations of the antitrust laws. Such reports may be made anonymously. Only persons with a need to know about such reports will be advised of them. Intimidating, retaliating against or imposing any form of retribution on any employee for reporting suspected violations of the antitrust laws may result in disciplinary action, including possible termination of employment.

VII. Conclusion

If you have any question about whether any of AGA's operations or activities may violate antitrust laws, contact the General Counsel's Office or your company's legal counsel. We look forward to working with you to ensure that AGA, its officers and employees, and the representatives of its member companies strictly comply with both the letter and the spirit of those laws in all AGA activities.

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