

International Wireless Industry Consortium (IWPC)
ANTITRUST COMPLIANCE POLICY

It is the policy of the International Wireless Industry Consortium (IWPC) to strictly comply with all laws applicable to the conduct of its activities, including antitrust and the antitrust laws of the United States. All IWPC members, officers, staff, employees, board members, committee members, and member representatives must comply with this policy and agree to conduct all IWPC activities in compliance with it.

Antitrust Law Basics

The US Antitrust laws are designed to be a comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade. These laws include the Sherman Antitrust Act, the Federal Trade Commission Act (which created the FTC), and the Clayton Act. For over 100 years, the antitrust laws have had the same basic objective: to preserve and promote the process of competition for the benefit of consumers, make sure there are strong incentives for businesses to operate efficiently, keep prices down, and keep quality up.

The Sherman Act outlaws every contract, combination, or conspiracy in restraint of trade, and any monopolization, attempted monopolization, or conspiracy or combination to monopolize. Long ago, the Supreme Court decided that the Sherman Act does not prohibit every restraint of trade, only those that are *unreasonable*. For instance, in some sense, an agreement between two individuals to form a partnership restrains trade, but may not do so unreasonably, and thus may be lawful under the antitrust laws. On the other hand, certain acts are considered so harmful to competition that they are almost always illegal. These include plain arrangements among competing individuals or businesses to fix prices, divide markets, or rig bids. These acts are “*per se*” violations of the Sherman Act; in other words, no defense or justification is allowed. An antitrust violation does not require proof of a formal agreement. A discussion of a sensitive topic, such as prices, among competitors followed by parallel action by those involved may be sufficient to show a price-fixing conspiracy. Other practices demand closer scrutiny based on principles that the courts and antitrust agencies have developed. These cases are examined under a “rule of reason” analysis. A practice is illegal if it restricts competition in some significant way and has no legitimate business justification. Practices that meet both characteristics are likely to harm consumers – by increasing prices, reducing availability of goods or services, lowering quality or service, or significantly stifling innovation.

The antitrust laws are further complicated by the fact that many business practices can have a reasonable business justification even if they limit competition in some way. For example, an agreement among manufacturers to adopt specifications that require fire-resistant materials for certain products may be called a standard. The agreement to adopt the standard is restrictive – the manufacturers have limited their own ability to use other materials, and they have limited consumer choice. However, the agreement to adopt the standard likely will benefit consumers in that it provides assurances of safety. Similarly, if manufacturers did not use a uniform standard for electrical outlets and plugs, the likely result would be incompatibilities between parts produced by different manufacturers. However, because of the standard, parts manufactured by different companies become interchangeable, competition for the parts increases, and prices go down.

The penalties for violating the Sherman Act can be severe. Although most enforcement actions are civil, the Sherman Act is also a criminal law, and individuals and businesses that violate it may be prosecuted by the Department of Justice. Criminal prosecutions are typically limited to intentional and clear violations such as when competitors fix prices or rig bids. The Sherman Act imposes criminal penalties of up to \$100 million for a corporation and \$1 million for an individual, along with up to 10 years in prison. Under federal law, the maximum fine may be increased to twice the amount the conspirators gained from the illegal acts or twice the money lost by the victims of the crime, if either of those amounts is over \$100 million. In prior cases, organizations, their officers and directors have been found civilly and criminally liable for antitrust violations. In some cases, the courts have even ordered the dissolution of associations determined to have engaged in anticompetitive activities.

The Federal Trade Commission Act bans “unfair methods of competition” and “unfair or deceptive acts or practices.” The Supreme Court has said that all violations of the Sherman Act also violate the FTC Act. Thus, although the FTC does not technically enforce the Sherman Act, it can bring cases under the FTC Act against the same kinds of activities that violate the Sherman Act. The FTC Act also reaches other practices that harm competition, but that may not fit neatly into categories of conduct formally prohibited by the Sherman Act. Only the FTC brings cases under the FTC Act.

The Clayton Act addresses specific practices that the Sherman Act does not clearly prohibit, such as mergers and interlocking directorates (that is, the same person making business decisions for competing companies). Section 7 of the Clayton Act prohibits mergers and acquisitions where the effect “may be substantially to lessen competition, or to tend to create a monopoly.” As amended, the Clayton Act also bans certain discriminatory prices, services, and allowances in dealings between merchants, and requires companies planning large mergers or acquisitions to notify the government of their plans in advance. The Clayton Act also authorizes private parties to sue for triple damages when they have been harmed by conduct that violates either the Sherman or Clayton Act and to obtain a court order prohibiting the anticompetitive practice in the future.

In addition to these federal statutes, most states have antitrust laws that are enforced by state attorneys general or private plaintiffs based on the federal antitrust laws.

Specific IWPC Antitrust Guidelines

1. IWPC members shall make no agreements concerning competitively sensitive topics such as:

- Pricing
- Discounts
- Terms and conditions of sale, including credit terms
- Costs
- Production or service levels
- Specific markets, customers, or bids
- Future plans concerning the production, distribution or marketing of particular goods or services
- Industry conditions, price levels, inventories, etc.
- Coordination of bids or requests for bids
- Bid processes
- Supply and demand for products or raw materials

Allocation or division of markets by geography or by customer
Collective or joint action regarding suppliers, customers or other competitors
“Approved” lists of suppliers or customers
Standards or codes to eliminate competition

Moreover, as illegal agreements can be inferred from, among other things, discussions among competitors, IWPC members must avoid discussion of competitively sensitive topics such as those identified above.

IWPC members must avoid even the appearance of engaging in these activities, as well as any others that could be construed as having an anticompetitive purpose.

2. All IWPC meetings, including all Board of Directors, Committee, and other meetings, shall be conducted pursuant to written agendas distributed in advance to attendees. Any sensitive items for inclusion on an agenda should be reviewed with IWPC legal counsel before distribution.
3. All meetings shall be conducted in accordance with the written agenda. Discussions shall be limited to agenda items, unless additional matters for discussion have been approved in advance by IWPC legal counsel.
4. Draft meeting minutes must be promptly prepared after each meeting. Draft meeting minutes shall be reviewed by IWPC legal counsel, then circulated to members present at the meeting.
5. Any discussion or meeting activity that appears to violate this policy should be objected to, and brought promptly to the attention of IWPC legal counsel.
6. All IWPC members shall be provided a copy of this policy, and it shall be available for reference at all IWPC-sponsored meetings and activities.
7. IWPC members, member representatives, or staff who participate in conduct that is contrary to this policy shall be subject to disciplinary measures up to and including termination of IWPC membership, termination of membership on the Board or relevant committee, or termination of employment in the case of staff.

* * *

Any questions about this policy should be directed to IWPC legal counsel.