

The Refractories Institute

ANTITRUST POLICY STATEMENT

Legal Compliance

The central premise of the antitrust laws of the various US jurisdictions and the competition laws of foreign jurisdictions is that competition functions best when each competitor makes its business decisions independently. Trade associations, such as The Refractories Institute (“TRI” or the “Institute”), are subject to rigorous scrutiny under these laws. Free and open discussion on matters of interest to the members of TRI is necessary for the successful operation of the Institute. However, TRI is ever-mindful and observant of the legal restrictions imposed by the law on such discussions.

TRI unquestionably promotes the policy of competition served by the antitrust and competition laws of the various jurisdictions of the world, is committed to complying with these laws, and appreciates the consequences of violating these laws can be severe for both the Institute and its members.

The Federal Trade Commission’s authority in determining what constitutes an unfair method of competition or unfair or deceptive act or practice under any given circumstances is extremely broad. As a result, antitrust actions can be brought to cover a wide range of charges. Perhaps the most important of the antitrust provisions for trade associations is Section 1 of the Sherman Act, which prohibits agreements, understandings or joint actions between two (or more) companies, formal or informal, that restrain competition. This provision of the antitrust laws is the primary concern for a trade association’s members because a trade association, by its very nature, is made up of a group of competitors. Moreover, Section 5 of the Federal Trade Commission Act forbids unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce. It is therefore imperative that no TRI action restrict competition and that no Institute activity or communication shall include any discussion which might be construed as an attempt to impair competition.

Also of critical importance is the fact that the Sherman Act is a criminal conspiracy statute. Consequently, a member who attends a meeting at which competitors engage in illegal discussions which relate to prices or bids may be held criminally responsible, even if he or she says nothing at the meeting. The member’s attendance at the meeting may be sufficient to imply acquiescence in the discussion, making that member liable to as great a penalty as those members who actively participated in the price-fixing or bid-rigging agreement

Specifically, members should not discuss issues of pricing strategy, current, anticipated, or “fair” profit margins, information related to business relationships, terms of pending or anticipated business transactions, membership restrictions, division of markets or segments, standard-setting conduct, self-regulation, credit terms, sales controls, the process of bidding on current projects or similar such topics that could be construed to be anticompetitive in nature. This is why TRI has established an antitrust compliance program to protect the Institute and its members from possible antitrust liability. Under this program, every effort will be made to stop any potential antitrust or competition law violation before it begins.

Antitrust Compliance Procedures

- A full description of TRI's intention to comply fully with antitrust and competition laws is included in the written policies of the Institute.
- All members of TRI receive a copy of the Institute's antitrust policy statement, detailing what can and cannot be done at Executive Committee, Board of Directors, and Membership meetings.
- All meetings of TRI, of any type, shall be conducted as though they were open to the public.
- All TRI meetings are regularly scheduled, and members are not permitted to hold "rump" meetings.
- Meetings shall be held pursuant to advance notice to all the members and a distribution of a written agenda prepared by TRI staff in consultation with the relevant committee chairman.
- No subject matter will be listed on any agenda which is contrary to TRI policy, its Bylaws, or is violative of the antitrust laws of the United States of America or the competition laws of any foreign jurisdiction.
- TRI Counsel updates members concerning antitrust problems periodically and has formalized the Institute's antitrust compliance program. A checklist of specific antitrust "Do's" and "Don'ts" is included on the following page. These should be reviewed prior to each joint session of the Board and Associate Member meeting.
- Accurate and complete minutes of the meetings shall be prepared and distributed to committee members and meeting attendees.
- The minutes of all meetings are reviewed by TRI Counsel. The minutes reflect the Institute's policy of complying with antitrust and competition laws.
- All Executive Committee, Board of Directors, and Membership meetings shall be attended by TRI Counsel. The agenda content of other meetings will determine the necessity for Counsel's presence at that meeting.
- All TRI business should take place only at meetings of the Institute and its committees where agendas have been reviewed in advance by TRI Counsel. TRI's antitrust policy and attendant procedures apply to social gatherings incidental to TRI-sponsored meetings as well.
- The Board of Directors is the governing body of the Institute and has the sole authority to set policy or make a commitment on behalf of TRI. TRI committees are advisory bodies which, upon a majority vote of members present, may make recommendations to the Board for its consideration. Committee members speak only for their companies.
- Should a particular topic of interest or concern arise quickly requiring immediate consensus or action, a committee survey may be conducted at the committee chairman's request through the TRI office. The subject matter shall be reviewed by staff, reviewed by TRI Counsel, and then the TRI staff shall conduct the survey. The results of the survey shall be recorded and a memorandum report prepared, which report shall be distributed to each committee member.

- TRI Counsel reviews, in advance, all new Institute programs or changes in existing programs that may have potential antitrust implications.
- No action by TRI which has the effect of rejecting a membership application becomes final without review by TRI Counsel.
- TRI maintains a formal record retention program.

This document is intended to assist in complying with requirements of antitrust and competition laws. It should not be considered an exhaustive presentation of antitrust/competition law requirements. If you have specific questions, you should seek guidance from your company's corporate counsel or TRI Counsel.

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