

International Corrugated Case Association

COMPETITION LAW AND ANTITRUST GUIDELINES

INTRODUCTION

The International Corrugated Case Association, Inc. ("ICCA") has a long and proud history of service to the worldwide corrugated industry and has complied throughout its history with the laws that apply to it and its members. The ICCA Board of Directors has reconfirmed its commitment to compliance with the competition and antitrust laws by including a specific compliance requirement in the ICCA Bylaws, by retaining experienced antitrust counsel to monitor ICCA activities, and by adopting these Antitrust Guidelines as a written expression of the collective intent of the Board.

Please understand that these Guidelines, although written for ICCA staff and members, do not and are not intended to replace member compliance policies and programs. These Guidelines provide a statement of ICCA's policies, provide guidance regarding proper conduct at meetings and in communications involving ICCA and its members, and give a brief refresher course on how the competition and antitrust laws apply to communications among competitors.

ICCA POLICY ON COMPETITION AND ANTITRUST COMPLIANCE

ICCA's policy on compliance with the competition and antitrust laws is part of ICCA's more general policy of strict compliance with all laws applicable to its activities. Compliance with this policy is the responsibility of each and every member of ICCA, the ICCA staff, and those who participate in ICCA activities, such as speakers at ICCA meetings.

These Guidelines shall, by mandate of the ICCA Bylaws and by direction of its Board of Directors, apply to all aspects of ICCA activity, including but not limited to its various meetings (including both business meetings and social functions thereof), the collection and dissemination of statistics, the creation and use of the ICCA website, and the collection and distribution of other business information related to the worldwide corrugated industry.

Enforcement varies dramatically among the 150-plus countries that currently have antitrust or competition laws. While it is impossible to develop guidelines that address the laws of each country, these Guidelines reflect what the Board deems are global "best practices" for compliance. Because antitrust laws may apply extraterritorially to actions taken in one country that have effects in another, these Guidelines are designed to comply with the highest standards. As noted above, ICCA members have an independent responsibility to understand and observe the competition laws in their own countries when participating in ICCA activities.

ICCA ORGANIZATION AND PURPOSE

ICCA was formed in 1961. It exists for the purpose of providing to its members those services and activities that can be most effectively conducted by an international organization. The services support and enhance the work of the association members and contribute to the well-being of the corrugated packaging industry worldwide.

ICCA's objectives are to:

- promote and protect the general welfare of the worldwide corrugated container industry;
- support and supplement the programs and activities of various national and regional trade associations throughout the world that serve the corrugated container industry;
- collect and disseminate information about corrugated products, issues, services, and resources throughout the world;
- gather, compile and disseminate statistical information and forecasts with respect to the worldwide corrugated container industry for purposes of better understanding that industry and in compliance with all applicable laws; and
- be the global platform for addressing those needs of the worldwide corrugated container industry that can more effectively be handled by the association and its work groups than by individual companies.

ICCA membership criteria are carefully crafted to be non-discriminatory, objective, and in furtherance of these pro- competitive purposes of the ICCA. Any proposed revisions to the ICCA membership criteria will be reviewed by antitrust counsel.

OVERVIEW OF COMPETITION AND ANTITRUST LAWS AND PENALTIES

Most legal regimes prohibit contracts, combinations and conspiracies in restraint of trade (e.g., the Sherman Act in the United States and Article 101 of the Treaty on the Functioning of the European Union (TFEU) in the EU) and unfair methods of competition and unfair or deceptive trade acts or practices (e.g., The Federal Trade Commission Act in the United States). A trade association itself and its members may be targets of enforcement if trade association activities facilitate anticompetitive activities.

Penalties for violations of competition or antitrust law vary widely from jurisdiction to jurisdiction. Many jurisdictions have criminalized certain offenses, with the United States, the EU, and other countries providing for very substantial fines against corporations, and some jurisdictions providing for fines against individuals. These fines may be multiplied depending on the gain of the offending party or the loss of victims. In addition, jurisdictions such as France, the U.K. and the U.S. also authorize prison sentences for individuals convicted of competition or antitrust offenses. Moreover, civil actions brought by victims of violations can result in treble damage verdicts, awards of attorney's fees and huge costs to the defendants.

Particularly since the mid-2000s, fines levied in the EU and U.S. have risen dramatically, reaching 3 billion Euros in a single year in the EU and 1 billion U.S. dollars in a single year in the U.S. Australia, Brazil, Canada, Japan, Korea, South America, and other jurisdictions have also been levying record fines in recent years.

AREAS OF ANTITRUST CONCERN

I. Conduct Most Often Prohibited Without Concern for Effect on Competition

As noted above, these Guidelines are concerned with conduct that involves the coordinated conduct of competitor parties in competitively sensitive areas. In most instances, enforcement actions can proceed based on the mere perception of an agreement or joint conduct among competitors. Even if the challenged conduct is undertaken independently, if it can be construed as being taken pursuant to a direct or tacit agreement, it may form the basis of a claim. Therefore the goal of all ICCA members and participants in ICCA events should be to avoid even the appearance of the conduct below:

- A. **Price fixing** applies to agreements between competitors to sell or purchase goods or services at agreed price levels. The agreement may be written, verbal or inferred from a common course of conduct. As a result, price and pricing should not be discussed at ICCA meetings or in ICCA publications. The prices covered by this **absolute** prohibition apply to the industry's finished products (boxes, displays, etc.) and to the prices of the major raw materials for the corrugated industry, including pulpwood, linerboard and medium.
- B. **Terms of sale**, such as discounts, allowances, credit, warranty, and freight terms, should not be discussed.
- C. **Customer or territorial allocations** between competitors are absolutely prohibited and should not be discussed.
- D. **Agreements to control or limit production or capacity** are also prohibited. Accordingly, discussion of these subjects is prohibited at ICCA meetings.
- E. **Bid-rigging** and agreements to **not** sell products to any particular customer or groups of customers are also most often illegal and discussions of these topics is prohibited.

II. Conduct Generally Considered to Have Positive Effect on Competition

The following types of association conduct are generally considered pro-competitive and are viewed as directly in furtherance of ICCA's core mission:

- A. monitoring government regulations;

- B. environmental enhancements and sustainability efforts;
- C. safety education and research;
- D. educating industry employees, governmental officials, students, customers, and the general public concerning the attributes and benefits of corrugated;
- E. communicating information about technical advances in production methods that enhance efficiency; and
- F. approaching regulatory and other governmental bodies with industry concerns.

ICCA PROCEDURES FOR COMPLIANCE WITH COMPETITION AND ANTITRUST LAW

1. For all ICCA meetings, detailed agendas shall be prepared in advance. Association counsel shall review and approve all agendas in advance of any meeting.
2. Experienced antitrust counsel must be present at each meeting of ICCA where either the subject matter of the meeting or the category of member personnel attending the meeting could present competitive concerns.
3. Minutes shall be kept for all ICCA meetings and shall be reviewed and approved by counsel and the meeting chairman to ensure that they accurately reflect what occurred at the meeting and who attended.
4. All members' representatives attending meetings must be responsible people who have previously been exposed to competition and antitrust law compliance.
5. ICCA will not create risks for its members and, therefore, prohibits any discussion at "rump meetings" or "get togethers" before or after ICCA meetings that would be improper at the meetings themselves.
6. Texts of proposed meeting presentations will be reviewed in advance by counsel to ensure that each presentation complies with these Guidelines. Outside presenters are to be informed in advance concerning ICCA's compliance policies and are to be encouraged to contact ICCA counsel with any questions they may have.
7. Communications such as newsletters, ICCA-wide emails, website postings, interviews by Association representatives, and presentations to outside agencies by staff should also be reviewed by counsel where the content merits such review.
8. Where counsel determines it is required, antitrust counsel will attend ICCA meetings and accompanying social events. Members' representatives are required to

conduct themselves in the same manner, from a competition law and antitrust standpoint, at meetings and at social functions.

9. Counsel shall be available to respond to members' legal questions about any matter being addressed by ICCA.

10. The ICCA statistics program shall be monitored by counsel and counsel shall advise the Board compliance on global best practices for the exchange of statistics. The program shall be operated and administered in a manner that does not permit the statistics to be used to monitor any cartel-like activity. The only permissible use of the statistics program is to better understand the global corrugated packaging industry for purposes of promoting ICCA's mission. To that end, the statistics program shall

- not allow for the exchange of customer-specific information;
- not estimate or project future price information;
- publish only aggregated historical data, presented in a way that prevents the identification of any particular company's data.

ROLE OF COUNSEL

These Guidelines are meant to supplement, not replace, the compliance programs in place at each ICCA member. However, members should not hesitate to contact ICCA's outside antitrust counsel. In every instance, the wisest course of action, even at a mere hint of uncertainty regarding the lawfulness of any conduct or communication by ICCA members, is to contact counsel.

David W. Simon, Esq.
Foley & Lardner LLP
777 East Wisconsin Avenue
Milwaukee, WI USA 53202

(414) 297-5519 (telephone)
(414) 588-6904 (mobile)
(414) 297-4900 (fax)
dsimon@foley.com (email)