

POLYURETHANE MANUFACTURERS ASSOCIATION (PMA)
POLICY ON COMPLIANCE WITH LAWS PROMOTING COMPETITION

Long standing Polyurethane Manufacturers Association (PMA) policy has emphasized the necessity of its members complying with the law - in all respects - in all localities. Thus, PMA encourages its members to fully recognize the importance of compliance with legal requirements, not only in the United States, but as importantly, with the laws where they do business.

PMA is the trade association of producers of cast elastomer polyurethane, many of whom compete with one another. Its membership also includes raw material, equipment and other suppliers to those producers, who also compete with each other. Thus, both PMA and its members are particularly sensitive to their responsibilities under the laws designed to promote competition and which penalize those who engage - usually collectively - in anti-competitive business practices.

The earliest, most advanced and aggressively "antitrust" laws are: The Sherman Act (1890), the Federal Trade Commission Act (1914), the Clayton Act (1914) and the Robinson-Patman Act (1936). These laws, the basis for the state antitrust - in whole or in part, have provided the basis for the "antitrust" (or competition) laws enacted throughout the United States.

Both federal and state antitrust laws, in varying degrees and by various enforcement mechanisms, address and very often prohibit, one or more of the following.

1. Any understanding or agreement, written or oral, formal or informal, express or implied, among competitors with regard to prices, bids and bidding practices, terms or conditions of sale, distribution, volume of production, territories or customers.
2. Exchange or collection and dissemination among competitors of information regarding current prices or pricing methods, and current bids and bidding practices.
3. Exchanges of cost or bidding information, for the purpose or with the probable effect of
 - (a) increasing, maintaining or stabilizing prices or bids; or,
 - (b) reducing competition in the marketplace with respect to the range or quality of products or services offered.
4. Collective (and sometimes individual) attempts to prevent any person or business entity from gaining access to any market or customer for goods or services, or collective prevention of any business entity from obtaining a supply of goods or otherwise purchasing goods or services freely in the market.

5. Agreements or understandings among competing firms with respect to their current bids or bidding practices, selection of products for purchase, their choice of suppliers, or the prices they will pay for supplies, especially if these agreements or understandings adversely impact competition.
6. Unfair methods of competition and unfair or deceptive acts or practices such as false or misleading advertising.
7. Price discrimination (or differentiation) between purchasers of "commodities of like grade and quality" if such activity substantially lessens competition.

Penalties for antitrust violations can be, and often are, severe. Violations of the Sherman Act can result in fines of up to \$10 million for corporations and \$350,000 for individuals. Individuals may be imprisoned for up to three years for each count on which convicted. Further, a related statute could be the basis for fines exceeding the \$10 million/\$350,000 Sherman Act fines - the so-called "double loss/double gain" fines. In addition non-government, private, treble damage actions are available, and successful antitrust plaintiffs can obtain huge awards.

Obviously, therefore, it behooves PMA, and any association, to exercise appropriate caution when holding its meetings and developing and conducting its programs and activities. By following the rules set out below, PMA should be able to minimize the legal risks both to it and to its members:

1. PMA's structure, bylaws and methods of operation shall be well defined and designed to serve the interests of the entire industry and the public, and shall be periodically reviewed.
2. Committees shall have clearly defined roles that avoid consideration of any issue or subject that could be or perceived to be anti-competitive.
3. Informal (or "rump") sessions of PMA members, its committees or other association bodies shall be avoided.
4. PMA's board of directors meetings, executive committee meetings and all other meetings where legally sensitive matters could be raised shall be attended by legal counsel. Legal counsel also shall be continually available to the members and staff for consultation, review and guidance on antitrust and other legal issues.
5. Each PMA meeting (committee, task force, etc.) shall have a written agenda reviewed and approved in advance by legal counsel to which the participants shall adhere.
6. There shall be a written record (minutes) of all PMA meetings, which shall be reviewed by legal counsel before distribution.

7. PMA's contracts and substantive correspondence or documents concerning such subjects as business practices, statistics, standards, certification, individual members, and membership, which have or may have legal implications, shall be reviewed by legal counsel before distribution.
8. Non-members seeking admission and members being considered for expulsion shall be treated without discrimination on the basis of criteria set out in advance.
9. Written or electronic communication between or among PMA members regarding PMA activities shall be distributed by staff rather than directly between or among the members; or staff shall receive such communication in the same manner as the members.
10. PMA letterhead stationery shall be distributed by staff only to those staff and association members who are current officers or who are authorized to use the letterhead for external correspondence.
11. Statistical data on past market information, whether collected by PMA or an outside entity, shall be collected in such a manner that assures the confidentiality of each reporting member's data. Statistical data shall not be collected that could be used to facilitate collusive pricing or restrictive business practices.
12. Dues schedules shall be designed so that members cannot thereby determine detailed or sensitive sales or profit information about any other member.
13. Association staff, legal counsel and members shall not tolerate or authorize any activity or discussion concerning current or future prices, pricing methods, production levels, market share, geographical allocation of markets, boycotts, restrictions on or refusals to deal with one or more suppliers or customers, transportation rates, future intentions regarding credit matters of other members or companies, or other matters that may be interpreted as unreasonable restraints of trades.

Legally troublesome association activities are often not clearly separable from acceptable ones. Therefore, it is critical that PMA have resources for advice and guidance to which it can turn whenever a legally sensitive matter arises. In order of importance, these resources are:

1. You, the person reading this policy - Your responsibilities begin with a thorough understanding of this document, and continue during every contact you have with the PMA itself, its members and other interested parties. For example, if you are approached privately at an association social function by a competitor who wants to discuss whether a new price increase you both just received from a common supplier should be absorbed or passed on to customers; or how to respond to new bidding requirements, you have a responsibility to yourself, your company and PMA to change the subject, protest this reckless behavior, and move away. For another example, if you are sitting on a committee that proposes an activity that

you believe may be legally sensitive, you should refer it to a senior association staff or legal counsel immediately for an opinion.

2. Legal Counsel - There are actually several resources here: PMA's counsel and, to a lesser extent, each member's own in-house or outside counsel. PMA counsel's primary responsibility is to PMA. While each member's own legal counsel may advise on antitrust or competition law problems for that member's own use, PMA's legal counsel must look at these matters from the association or collective perspective. Counsel is charged with keeping current with those laws and regulations that may have an adverse impact upon the association and making recommendations for internal procedures that will help the association avoid liability. It is for these reasons PMA requires legal counsel's presence at all director's and other meetings where legally sensitive matters could arise.
3. Association Staff - Although not experts in antitrust or competition law, the staff, especially the executive director, have varying degrees of sensitivity to antitrust concerns and can help members recognize when and under what circumstances legal counsel should be consulted.

Once more: If despite these policies, a PMA member becomes involved in activities or discussions that the member believes are or may be illegal, the member should withdraw from participation, announce the objections and promptly inform PMA's legal counsel.

This statement recognizes that PMA, like all associations, operates within a complex web of antitrust laws designed to assure open competition. The legal pitfalls are many and require the diligent efforts of you, the member, PMA legal counsel and PMA staff to avoid them.