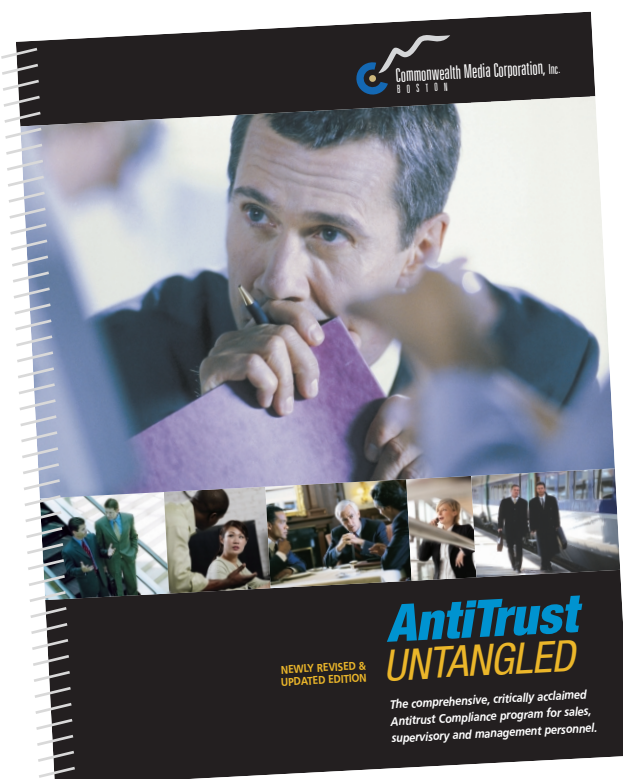


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*The comprehensive, critically acclaimed
Antitrust Compliance program for sales,
supervisory and management personnel.*

This document includes several substantive excerpts from the new 2007 extensively reviewed and revised 170-page *Antitrust Untangled* workbook program. Please see the complete Table of Contents for a thorough understanding of the contents of this acclaimed employee training resource, or call for more information.

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Excerpt #1

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Includes:

- Preface
- Table of Contents
- Introduction
- Unit One: Overview of the Program



AntiTrust **UNTANGLED**

The comprehensive, critically acclaimed
Antitrust Compliance program
for sales, supervisory, and management personnel.

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Preface

Antitrust violations used to be considered a normal business risk — if you lost, you paid a fine (not too steep); but most felt the pay-offs were worth it. Today, the stakes are *much higher*. Convictions are increasing, individual and corporate fines are reaching staggering levels, and business people are going to jail. An individual who violates the Sherman Act today, for example, may be fined up to **\$1 Million and imprisoned for up to ten years**. These are not theoretical punishments: individuals convicted of price fixing or bid rigging are, in fact, very likely to go to prison for substantial terms. Corporate fines, too, have increased exponentially. The U.S. Department of Justice has collected over \$1 Billion in fines in the last few years for price fixing and bid rigging. In about 50 cases, corporate fines have equaled or exceeded \$10 Million, and seven corporations have paid fines of \$100 Million or more. The greater the profits from the illegal conduct, and the greater the loss to the victims, the higher the fine.

No industry is immune. Targets of criminal and civil antitrust cases include producers of virtually all types of goods and services: industrial materials, consumer products, automobiles, computers, colleges, and health care providers such as doctors, hospitals, and HMOs. Some eye-opening cases in point:

- The record fine for one company is \$500 Million against a major pharmaceutical firm for its role in an international vitamin cartel.
- A manufacturer of a computer component pled guilty and agreed to pay a fine of \$160 Million for participating in another international cartel.
- Six transportation companies paid nearly \$80 Million in fines and over \$300 Million in fare restitution in one large class action suit.
- One company pled guilty in a criminal antitrust case and paid a \$100 Million fine — and will pay another \$90 Million to settle class actions.
- All told, the Justice Department has collected over \$1 Billion in fines in the last few years for price-fixing.

Business is a tough game today for most sales people and managers. The hours are long. Performance standards are high. Results are what seem to count most. In this atmosphere, it's hard **not** to feel **unnecessarily restricted** by the antitrust laws. These laws, however, serve to protect you, as well as others, and some of the biggest recoveries in private cases have gone to large companies victimized by cartels among major suppliers. But the perspective that the antitrust laws hamstring business persists. Moreover, the laws and their interpretations can be **complicated**. It takes legal specialists to fully understand them. Yet it is you, the salesperson or manager, who has to live with them. It is for you that *Antitrust Untangled* was created.

With this self-study program we have attempted to untangle the antitrust knot. It's important for you to know that we do not give legal advice. We do tell you the risks of antitrust violations, and provide a guide in avoiding those risks. Always, we encourage you to seek out the legal specialists when you aren't sure about what to do.

continued

Antitrust Untangled is **comprehensive**. It covers the antitrust laws (and most of the problems) you could encounter in familiar situations — from trade associations to meeting a competitor at a lunch counter. But we've avoided mergers, joint ventures, and patent licensing — primarily handled by top management and legal counsel.

Antitrust Untangled is **comfortable**. Working at your own pace, without pressure, you will learn the basics in four to five hours of serious study. One person summarized the feelings of the many salespeople and managers who have completed this program when he said, "Now, I understand."

Antitrust Untangled is **up-to-date**. For example, when the U.S. Supreme Court overturned in June 2007 a century-old precedent, we published a revised and updated edition of *Antitrust Untangled* immediately. Our ability and commitment to do that reflects the importance we place on presenting the latest and most authoritative legal opinion. Professor Louis B. Schwartz, Benjamin Franklin Professor of Law at the University of Pennsylvania and widely-recognized casebook author, served as consultant to the original edition. The program was then updated by William C. Erxleben, an expert in antitrust and regulatory policy, formerly of the University of Washington and a Regional Director of the Federal Trade Commission, then in private practice. The most recent editions have been reviewed and updated by Anthony C. Epstein, an experienced antitrust litigator and formerly an attorney in the Antitrust Division of the U.S. Department of Justice. Mr. Epstein is a partner at the law firm of Steptoe & Johnson LLP, Washington, D.C., and a contributing editor to *Antitrust Untangled*.

Finally, *Antitrust Untangled* is **real**. We avoid complicated legal terminology wherever possible and present realistic, day-to-day situations, as well as answers. We think you will like the program as you begin to see the antitrust knot untangle.

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Introduction

The purpose of this introductory unit is to clarify the function and basic vocabulary of the this program. This is done specifically so that your progress toward a realistic understanding of antitrust compliance is aided by familiarity with certain (necessary) terms and procedural matters relating to the way the course presents itself.

Be sure to read this Unit thoroughly. Your comprehension of the *Antitrust Untangled* process is grounded in how familiar you are with this basic introductory material.

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SECTION A How to Use This Training Program

This is a comprehensive training program, not just a “book.” To use it correctly, and to get the most out of it, you should first understand what it *is* and what it is *not*.

What this program is:

Antitrust Untangled gives you guidelines about “acceptable” and “unacceptable” behavior. It is designed to alert you to the risks of antitrust violations, to guide you toward behavior that avoids such risks, and to encourage you to consult with legal counsel when you aren’t sure about what to do.

What this program is not:

Antitrust Untangled is not an attorney. It is not a “do-it-yourself” law book. It does not give legal advice. It does not state the law in all its complexity. As such, it does not handle subjects that are within the exclusive province of top management, such as mergers, joint ventures, and patent licensing.

How It Works

To master the material, *Antitrust Untangled* requires your *active participation*. It moves along in short, easy steps. By the end, you might be surprised by how much you have learned in a relatively short time.

To facilitate learning, the program has been structured differently from most books you read. You will be engaging in a number of different activities in order to master this material. You will:

1. Read **Textual Material**

This information serves as the basis for how to act on the job.

2. Answer **Comprehension Questions**

These are questions about the textual material. They are designed to help you understand the information presented. BE SURE TO WRITE YOUR ANSWERS IN THIS BOOK. The process of actually writing or marking your answers significantly increases how fast and well you learn. After answering the questions, turn the page and check your answers.

3. Read **Application Examples**

To illustrate how textual information relates to actual situations, we often provide Application Examples. Legal opinions clarify the rationale behind each.

4. Answer **Application Questions**

These are “real-life situation” questions that ask you to *apply* the information being discussed and to make a judgment about whether you believe the actions

continued

or behaviors are “acceptable,” “questionable,” or “unacceptable.” After answering the questions, turn the page and check your answers.

5. *Answer* **End-of-Unit Review Questions**

These are summary questions about all of the information presented in the unit. After answering the questions, turn the page and check your answers.

6. *Take the* **Final Test**

Finally, you take a final test. If you have faithfully worked through the materials and written out or marked your answers to the questions, you should have little difficulty passing the test. After taking it, you score it. If you did not pass, you re-study the material that caused you difficulty and then take the test a second time.

7. *Complete the* **Certifying Statement**

This statement (“I certify that I have completed the antitrust compliance program, *Antitrust Untangled*, in good faith, and have taken and passed the final test.”) is signed by you, and sent in to your designated corporate officer, to be kept on file.

Acceptable, Questionable, and Unacceptable Behavior

As mentioned above, you will be asked to identify whether the given actions and behavior are “acceptable,” “questionable,” or “unacceptable”:

- “Acceptable” behavior is defined as behavior that, in most circumstances and standing alone, would not be illegal.
- “Questionable” behavior is defined as behavior that might be illegal and, therefore, would require consultation with legal counsel before proceeding.
- “Unacceptable” behavior is defined as behavior that in most circumstances, and standing alone, would be illegal.

Because antitrust is a complex field, definitive answers can come only from legal specialists. However, since many of your day-to-day business actions can have antitrust implications, it is important that you be alerted to the risks and be guided in your behavior so as to avoid even the *appearance* of violation of the law. That is why you will sometimes find conduct designated in this program as “unacceptable” even though (in most circumstances and standing alone) such conduct might not actually be illegal. Similarly, where conduct is labeled “acceptable,” it means that generally the legal risks in such behavior are minimal. It **does not mean** that such behavior could never figure as part of a larger illegal scheme, which might be held unlawful.

Thus, the most important general rule to follow in antitrust compliance is: “When in doubt, consult your supervisor and/or the legal department.”

Your Previous Knowledge

You may already know something about the antitrust laws as they pertain to you and your job. Some of that knowledge, however, could be out of date or incorrect. Therefore, it is extremely important, as you work through this program, to keep an open mind regarding the information contained here. Do not answer the questions based on your prior knowledge or beliefs. Do try to pretend that you know nothing whatsoever about antitrust, and be prepared to accept what this program has to offer.

The material to be studied here requires time and concentration on your part. You should not try to complete the program in one sitting, or rush through it. Longer breaks are indicated at the ends of Units Two and Four.

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SECTION B Definitions of Technical Terms

This program avoids complicated legal terminology wherever possible. However, in certain cases, legal terms are required for precise understanding. The following terms are used throughout the program. Please study their definitions carefully. An understanding of these terms will enhance your ability to apply the information presented later.

Legal Department

Frequently, reference is made to your checking with your supervisor or legal department before taking a certain action. It is recognized that you might not have a legal department as such. The term “legal department” is intended to mean: corporate counsel (in-house), corporate counsel (outside), legal coordinator, legal services administrator, or any individual or department responsible for handling or coordinating your legal services. Naturally, any questions about which individual or department serves this function within your organization should be directed to your supervisor.

Unilateral

Reference is often made to an action being “acceptable if it is taken unilaterally.” What is meant is an action taken by you or your company alone, without agreement or consultation with any individual or organization outside of your own company, including competitors, suppliers, and customers, but not including outside counsel.

Per Se Violation

These are violations of the law that are inherently illegal. That is, there would be no excuse or justification that would make them out to be reasonable. The action, in itself, is a violation of the law.

Foreclosure

Sometimes, reference is made to an action “foreclosing” someone else’s opportunity to engage in another action. What is meant is that the option to take a business action is shut off, narrowed, or made more difficult.

Monopoly

Monopoly is defined as: the exclusive control of a product or service in a given market, or enough control to enable a firm to set prices in virtual disregard of competition or to dictate business terms to suppliers, distributors, or competitors.

Rule of Reason

The “rule of reason” governs situations — other than per se violations — where a restraint of trade may be legal because it has a legitimate business justification and does not seriously impair competition. The court or administrative agency will look at the circumstances of a particular activity to determine whether it is “reasonable.” If it is deemed “reasonable,” then it is legal. The rule of reason is different from a per se violation in that a per se violation does not involve reasonableness; the mere act itself makes it a violation.

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Review of Definitions

Take a moment now to complete a short exercise about the definitions just given. Match the terms in the left-hand column with the definitions in the right-hand column by placing the appropriate letters in the correct numbered boxes on the right.

- | | |
|---------------------|--|
| A. Acceptable | 1. <input type="checkbox"/> action taken alone |
| B. Legal Department | 2. <input type="checkbox"/> legality in doubt, check with legal department |
| C. Unacceptable | 3. <input type="checkbox"/> corporate counsel |
| D. Unilateral | 4. <input type="checkbox"/> probably legal |
| E. Questionable | 5. <input type="checkbox"/> shut off opportunity |
| F. Monopoly | 6. <input type="checkbox"/> probably illegal |
| G. Foreclosure | 7. <input type="checkbox"/> inherently illegal |
| H. Per Se Violation | 8. <input type="checkbox"/> "if reasonable, then legal" |
| I. Rule of Reason | 9. <input type="checkbox"/> power to dictate terms of trade |

Turn the page and check your answers.

Answers

1. D *action taken alone*
2. E *legality in doubt, check with legal department*
3. B *corporate counsel*
4. A **probably** *legal*
5. G *shut off opportunity*
6. C **probably** *illegal*
7. H **inherently** *illegal*
8. I *"if reasonable, then legal"*
9. F *power to dictate terms of trade*

GO ON TO UNIT ONE.

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Unit One:

Overview of the Program

This first unit provides a program-wide view of the basis for antitrust compliance as it derives from the Sherman Act, Clayton Act, Robinson-Patman Act, and Federal Trade Commission Act. This is in preparation for later, more-detailed examination of major aspects of the antitrust problem, including: relationships with competitors, relationships with customers and suppliers; discrimination in prices, allowances, and services; unfair methods of competition; and related information.

In addition, this unit provides useful insights into the historical perspective of antitrust laws and their enforcement, as well as a contemporary look at the consequences of violation.

SECTION A **Historical Perspective**

Governments throughout world history have long realized that businesses (performing a vital service in society) nevertheless have opportunity and temptation to get together to raise prices, to hurt other competitors, or to combine into monopolies. For hundreds of years, Anglo-American law has made provisions against these possible abuses.

Beginning in 1890, Congress enacted a series of laws that are collectively and generally referred to as the federal antitrust laws. These statutes express the dominant philosophy under which our economic system operates: namely, that of a free market in which the laws of supply and demand determine the terms and conditions of production, distribution, and sale, and where seller and buyer have freedom to deal independently. To be sure, important segments of American business are subject to special regulatory statutes that affect competition (for example, in public transportation, power supply, and communication). But these are regarded as exceptional because a competitive market is hard to maintain in those areas. And even here, the antitrust philosophy is often applied. For the great bulk of raw material production, manufacturing, and distribution, the antitrust laws are fully applicable.

The four principal federal statutes are known as the Sherman Act, the Clayton Act, the Federal Trade Commission Act, and the Robinson-Patman Act. Almost all states also have antitrust laws, generally dealing with the same subject matter as the federal laws. Only a brief overview of the individual states' laws appears in this program; in most respects their proscriptions are similar to those contained in the federal antitrust laws.

The language of the antitrust laws is deliberately broad, prohibiting such activities as "agreements in restraint of trade" and "unfair methods of competition." While questions of interpretation still remain, guidelines for compliance have evolved from many court decisions. It is the purpose of this program to catalog many of those activities that are prohibited by the antitrust laws so that you can easily recognize problems of antitrust significance that may confront you from time to time.

Comprehension Questions

1. Laws governing restrictions of monopolies are of recent origin.
 - A. True
 - B. False
2. The Sherman Act was passed in 1890 to prevent: *(choose one)*
 - A. Consumer boycotts
 - B. Monopolization

Turn the page and check your answers.

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Answers

1. B. *False*
2. B. *Monopolization*

SECTION B The Sherman Act/Overview

Section 1 of the Sherman Act forbids contracts, combinations, and conspiracies “in restraint of trade or commerce.” Section 2 forbids anyone to monopolize or to attempt, combine, or conspire to monopolize “any part” of interstate or foreign commerce. Violations of these provisions are criminal and felonious, entailing possible imprisonment up to ten years, as well as heavy fines. Section 1 can be thought of (in popular terms) as a prohibition against traders “ganging up” against other firms or the consuming public; independent firms must freely compete for customers’ favor. In order to violate Section 1, more than one firm must participate. Section 2 gets at single-firm domination or attempt to dominate the trade, although the section can also be violated by several firms conspiring to monopolize.

The central idea of Section 2 is that one firm or collaborating group should not be allowed unfairly to obtain or abuse a power position where those who deal with it have no effective alternative. The monopolist “runs the show,” can set prices without too much concern that those prices will be undercut, and can run would-be competitors out of business by below-cost or other predatory tactics. Section 2 also prohibits *attempts* to monopolize so that it can apply long before the guilty parties actually achieve monopoly. The only justification that Section 2 accepts for single-firm domination of a market is that the dominant position was achieved purely by fair competition and superior efficiency without maneuvers to exclude other firms from the trade unjustifiably.

Although Section 1 of the Sherman Act literally forbids all “restraint of trade,” it was early recognized that many arrangements and practices which in a sense restrain trade are harmless and even promotive of effective competition. For example, agreements between partners that they will not compete with the partnership, or agreements between an employer and employee moderately restricting post-employment competition with the employer are recognized as “reasonable” and lawful. Thus was born the “rule of reason,” which applies broadly in antitrust. On the other hand, experience showed that some practices were so generally incompatible with competition that they must be regarded as inherently (“per se”) unlawful, without exception or excuse. These include agreements among competitors to fix, stabilize, or influence prices, “boycott” agreements to allocate markets or customers among competitors or to restrain their production or sales.

While some sort of joint or concerted action or agreement is an essential element of a Section 1 violation, the following points should be noted:

- a. No written or formal agreement need be shown; an agreement may be inferred from the conduct of the parties.
- b. The agreement itself is what the law prohibits; it is not necessary that the agreeing parties adhere to the terms of the agreement.
- c. While parallel business conduct is not unlawful, it may constitute evidence that the parallelism or similarity resulted from or is pursuant to an agreement.

For these reasons, **an important part of antitrust compliance is affirmative conduct** by the persons involved **which indicates non-participation** in unlawful practices by others forbidden by this Act.

Comprehension Questions

1. Section 1 of the Sherman Act outlaws: *(choose one)*
 - A. Unethical business practices
 - B. Immoral business practices
 - C. Combinations and conspiracies in the restraint of trade.
2. Section 2 outlaws: *(choose one)*
 - A. False advertising
 - B. All single-firm domination of a trade
 - C. Anticompetitive conduct to achieve or abuse a monopoly position
3. The Sherman Act seriously affects our relationships with our competitors because: *(choose one)*
 - A. It forbids us from making agreements with them on how business should be done.
 - B. It forbids us from unjustifiably driving them out of business by monopolistic practices.
 - C. Both of the above
 - D. None of the above
4. What does **per se unlawful** mean? *(choose one)*
 - A. The action itself is not unlawful unless it causes some damage.
 - B. The action itself is unlawful; it does not have to cause any damage.
 - C. The action itself is not unlawful, but the result may be.

Turn the page and check your answers.

Answers

1. C. *Combinations and conspiracies in the restraint of trade*
2. C. *Anticompetitive conduct to achieve or abuse a monopoly position*
3. C. *Both of the above*
4. B. *The action itself is unlawful; it does not have to cause any damage.*

Note:

If you missed any of these answers, go back and study the material until you understand why the answer indicated is the correct one. Do not proceed until you understand and agree with these answers. This instruction holds true for every question and answer in this program.

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Comprehension Questions *(continued)*

5. Arrangements between competitors to influence prices are: *(choose one)*
- A. Per se unlawful
 - B. Unlawful if they constitute unreasonable restraints
6. Arrangements between competitors, such as fixing prices and allocating customers are: *(choose one)*
- A. Per se unlawful
 - B. Unlawful if they constitute unreasonable restraints
7. An unlawful conspiracy can only exist if there is written agreement.
- A. True
 - B. False
8. An unlawful conspiracy can only exist if both parties adhere to the agreement.
- A. True
 - B. False
9. Parallel business conduct is per se unlawful.
- A. True
 - B. False

Turn the page and check your answers.

Answers

5. A. *Per se unlawful*
6. A. *Per se unlawful*
7. B. *False*
8. B. *False*
9. B. *False*

Note:

Again, make sure you understand and agree with these answers before continuing.

SECTION C The Clayton Act/Overview

The Sherman Act proved to be ineffective against some practices that Congress wished to curtail. The rules concerning these practices were tightened by the Clayton Act: Section 2 (price and other discriminations among customers), Section 3 (exclusive dealing and tying), Section 7 (mergers), and Section 8 (interlocking directorships), etc.

These practices were now prohibited if the “effect may be” to substantially lessen competition or tend to create a monopoly. Later, Section 2 of the Clayton Act was amended by the Robinson-Patman Act to tighten still further the rules against price and other discriminations.

The Clayton Act, unlike the Sherman Act, carries no criminal penalties. However, both provide that persons injured may recover three times the amount of the injury (“treble damages”) plus attorneys’ fees. This possibility is one of the main reasons why corporations seek to avoid behavior which gives even the *appearance* of violation. The Clayton Act provides that, if the government wins an antitrust suit, the victory establishes a “prima facie” case of violation in a private suit for treble damages based on the same behavior. This assist to private recovery is, however, not available if the defendant does not contest the government suit. Such non-contest victories by the government are called “consent decrees” or “consent judgments.” A consent decree is a court order just as much as an order issued at the end of contested litigation; violation of either can be punished as “contempt of court.” Defendants are sometimes eager to consent in order to avoid prima facie liability in private suits and reduce their exposure to treble damages. The government is also motivated to enter into consent decrees because it can dispose of more cases that way. Federal legislation provides for judicial oversight of the consent decree process to assure that the public interest does not suffer in these “deals.”

Another distinction between the Sherman and Clayton Acts is that the former reaches all commerce (whether in goods or services), whereas Sections 2 and 3 of the Clayton Act are confined to tangible goods. Professional sports, real estate brokerage, medical and legal practices are examples of businesses covered by the Sherman Act but not some sections of the Clayton Act.

Comprehension Questions

1. The Clayton Act outlaws certain practices even if no actual anticompetitive effects occur.
 A. True
 B. False
2. A consent decree is:
 A. A court order
 B. An agreement between private parties
3. Some of the antitrust laws reach all commerce; i.e. both goods and services.
 A. True
 B. False

Turn the page and check your answers.

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Answers

1. A. True

Opinion: *The test of this is whether the practices will **likely** have anticompetitive effects.*

2. A. A court order

3. A. True

SECTION D The Federal Trade Commission Act/Overview

In 1914, along with the Clayton Act, Congress passed the Federal Trade Commission Act to condemn the broad category of “unfair” competitive practices. The central idea was to set up an agency, the Federal Trade Commission, which would be able to put a stop to practices which, while not necessarily violating the Sherman Act, fell within the same general principles. FTC proceedings result in “cease-and-desist” orders. These, like court decrees of injunction, operate with an eye toward future practices or unfair competition. Neither criminal penalties nor treble damages for past actions are provided by the FTC Act except for fines for violating orders issued by the Commission. The Commission may also have the power to require companies to relinquish money obtained through unfair or deceptive practices.

The Federal Trade Commission Act was tightened in a number of respects by the Federal Trade Commission Improvements Act of 1975. A Commission ruling against certain practices by one company may now be held binding against other companies or individuals having “actual knowledge that such acts or practices are unfair or deceptive.” The commission has also been authorized to bring “redress” suits to compensate members of the public injured by violation of Commission orders “which a reasonable man would have known under the circumstances was dishonest or fraudulent.”

Comprehension Question

1. The Federal Trade Commission's purpose is to stop "unfair" competitive practices only if they are unlawful under the antitrust laws.
 - A. True
 - B. False

Turn the page and check your answer.

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Answer

1. B. *False*

SECTION E Consequences of Antitrust Violations

Violations of the antitrust laws may result in criminal and civil sanctions, both to the company and to the individuals involved. In 1974, Congress amended the Sherman Act to make its violation a felony. The penalties have also been increased significantly. And today, an individual who violates the Act may be fined up to \$1 Million and imprisoned for up to ten years. Fines for corporate violations have been increased to \$100 Million. Under the Federal Sentencing Guidelines, individuals convicted of price fixing are very likely to go to jail.

In addition to criminal sanctions, government enforcement agencies (The Federal Trade Commission and the Antitrust Division of the Department of Justice) and private parties may seek and obtain injunctive relief prohibiting future violations or activities. While a person or corporation may be accused and found to have violated the law by a single and limited act, it is not unusual for an injunction to be issued that contains broad prohibitions against conduct beyond that which was found to constitute the violation originally charged. Such orders can seriously limit freedom of corporate action; further, a violation of an order can result in contempt proceedings and fines. Failure to comply with an order issued by the Federal Trade Commission, for example, carries civil penalties of over \$10,000 for each violation or, in the circumstances of a continuing violation, over \$10,000 for each day the violation continues. These penalties are indexed periodically, based on inflation.

Lastly, a violation of the antitrust laws may result in your company becoming liable in treble damages to any person or business injured by the violation. This potential exposure was first illustrated in the electrical equipment manufacturers' cases (in the early 1960's) in which private litigants secured hundreds of millions of dollars in damages from the violators. The magnitude of this risk has since grown substantially as the result of certain provisions that allow lawsuits to be maintained not only on behalf of the named persons who instituted the action, but also on behalf of the "class" of other persons similarly situated, as well.

Comprehension Questions

1. As an individual, how much can you be fined for a Sherman Act antitrust violation?

2. How long can an individual be imprisoned for an antitrust violation?

3. Antitrust violations under the Sherman Act are: *(choose one)*

A. Misdemeanors

B. Felonies

4. Injunctions can seriously limit corporate actions because: *(choose the best one)*

A. They can prohibit broad ranges of conduct beyond what the antitrust laws affect.

B. Everyone will be watching a company more closely if it has an injunction against it.

C. The corporation can be required to document all its transactions and provide such documentation upon request.

5. Match

A. The fine for disobeying an FTC order

a. Three times the damages suffered (treble damages)

B. What the company can lose in a private law suit

b. Over \$10,000/day for each day violation continues

6. Suppose one company sues another for antitrust violations, and wins. Suppose that it is determined that the second company's illegal activities have cost the first \$300,000 in damages. How much can the winning company potentially collect? *(choose one)*

A. \$5,000/day for each day the violation continued, plus attorneys' fees

B. \$100,000, plus attorneys' fees

C. \$300,000, plus attorneys' fees

D. \$900,000, plus attorneys' fees

Turn the page and check your answer.

Answers

1. *\$1,000,000*
2. *Ten years*
3. *B. Felonies*
4. *A. They can prohibit broad ranges of conduct beyond what the antitrust laws affect.*
- 5A. *[b] The fine for disobeying an FTC order: over \$10,000/day for each day violation continues*
- 5B. *[a] What the company can lose in a private lawsuit: three times the damages suffered (treble damages)*
6. *D. \$900,000, plus attorneys' fees*

This ends unit one.

GO ON TO UNIT TWO.



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Excerpt #2



Includes:

- Unit Two: Relationships with Competitors

Unit Two: *Relationships with Competitors*

Competition has been the traditional life force of the American economics system. Pressures on and interests of competitors in our local, regional, and national marketplaces sometimes have impelled persons to seek agreements with their competitors, usually with the objective of reducing mutual risk by “regularizing” their competition. Such practices are illegal.

This unit clearly identifies the variety of practices involving direct relationships between competitors, including:

- A. Price-Fixing
- B. Anti-Competitive Information Exchange
- C. Market Division and Customer Allocating
- D. Trade Associations
- E. What To Do

Because competitors may also meet for reasons perfectly acceptable under federal statutes, this unit also describes those *lawful* practices and lays out specific actions you can take to avoid even the *appearance* of having violated the law.

SECTION A Price-Fixing

The Sherman Act outlaws agreements between competitors about how much to charge, how to set prices, whether or how much to bid, or anything else that stabilizes or influences prices. Such agreements or understandings are unlawful per se under Section 1 of the Sherman Act.

Many agreements that indirectly affect the price — relating to discounts, freight, pricing systems, credit or other terms of sale — are also unlawful per se. Likewise, indirect collaboration with competitors is unlawful, as with two competitors working indirectly through a broker to fix prices.

Not only is it essential to assure that no such agreements are entered into, it is equally essential to avoid any conduct which, under the facts and circumstances prevailing, suggests that it was not taken unilaterally. Parallel price or market action by your company or others, coupled with contemporaneous contacts or communications, becomes immediately suspect.

The antitrust laws recognize that it is necessary for businesspersons to keep abreast of conditions in the market and to know the prices that their competitors are presently charging (or have charged in the recent past) for competitive products or services. Indeed, vigorous competition requires businesspersons to be so informed. In that regard, your company is free to have its sales personnel or others determine the state of the market by getting information from customers, retailers, wholesalers, and brokers (provided they are not competitors).

Personnel of your company must be especially guarded in their contacts with competitors; antitrust violations are often made of little more than a private meeting of competitors followed by unexplained parallel action. Because competitors generally encounter identical economic pressures, parallel action is frequently unavoidable. It is of the utmost importance, therefore, to avoid any contacts with competitors that could support an inference of collusion. An individual's relationships with his or her competitor's personnel should be conducted at all times as if they were in the public view.

Comprehension Questions

1. Which of the following are illegal? (*choose all that apply*)
 - A. Agreements between competitors regarding prices
 - B. Agreements between competitors regarding terms and conditions of sale
 - C. Agreements between competitors regarding discounts
 - D. Having the same prices as one or more competitors
 - E. Having the same freight charges as one or more competitors

2. Where can you safely obtain information about your competitor's current prices? (*choose all that apply*)
 - A. Customers
 - B. Competitors
 - C. Brokers
 - D. Retailers
 - E. Wholesalers

Turn the page and check your answers.

Answers

- A. *Agreements between competitors regarding prices*
 B. *Agreements between competitors regarding terms and conditions of sale*
 C. *Agreements between competitors regarding discounts*

Opinion: *Option D, having the same prices as one or more competitors, is not illegal when competition forces all competitors to charge the same low price. Similarly, Option E, having the same freight charges as one or more competitors, is not illegal when freight charges have been independently arrived at. However, note should be taken that certain industry-wide systems of "base point pricing" (under which common freight factors in the delivered price are arbitrarily set) are probably illegal.*

- A. *Customers*
 C. *Brokers (provided they are not acting as a clearing-house for agreements or understandings among competitors)*
 D. *Retailers*
 E. *Wholesalers*

Application Examples

Your company, in response to increased costs, announces an across-the-board 3% price increase. Two days later, four of your competitors follow suit. By the following week, all of your major competitors have announced 3% price increases.

Opinion: *Acceptable. Normally this would be legal if each company has made its own decision, independent of any conversations or agreements with each other.*

You and your competitor's sales manager, Harrison Stook (of Benson & Phine), agree to change from supplying your East Coast customers F.O.B. Baltimore to F.O.B. Chicago. The two of you also agree to try to get other companies to make the same change.

Opinion: *Unacceptable. Freight arrangements directly affect price. Competitors cannot legally agree on such points.*

Application Problem

1. Hart Lorenz, your Southeastern regional sales manager and publicity chairman for the Southeast Association of Law-abiding Entrepreneurs (S.A.L.E.), is angry. He feels that the news media are giving your industry a bad name. He has called together the boards of all the concerned trade associations to present a proposal for a multimillion-dollar advertising campaign to improve the industry image. Someone points out that the cost would cause a general price increase, but the majority agree on the campaign. They work out a plan for assessing various association members to cover the cost of the campaign.

Your opinion: A. Acceptable
 B. Questionable
 C. Unacceptable

Turn the page and check your answer.

Answer

1. A. *Acceptable*

Opinion: *The group did not agree to a price increase, nor did they otherwise compromise their independent competitive positions. If each company involved ends up raising its prices because of increased costs, that is all right, so long as they make independent decisions.*

SECTION B Anti-Competitive Information Exchange

The exchange of competitive information (such as prices) by competitors has for decades been the subject of substantial antitrust litigation. Competitive information is defined as that information that could lend itself to the alignment of prices, production, and other commercial policy. Such exchanges, in conjunction with other facts and circumstances, may tend to prove the existence of a conspiracy.

It is good policy, therefore, to avoid exchanging competitive information with competitors.

It is important to understand what type of information is considered competitive, in order to avoid any potential problems. For this reason, we have identified a number of examples.

Types of Competitive Information

1. Current or future prices (example: current or proposed price lists)
2. Terms of sale
3. Costs, average costs of manufacture or sale, or any formula for computing such costs
4. Areas of sales efforts (example: descriptions of territories where sales efforts will or will not be made)
5. Discount information
6. Mark-ups or margin of profit
7. Production and delivery schedules

Exchanging current price lists with competitors *after* public distribution should also be avoided. Since the information is publicly available, it is available from sources other than the competitor. Any systematic exchange of competitive information or unstated understandings between competitors, even though such information is public, could (in combination with other circumstances) lead to charges of antitrust violation and for that reason should be strictly avoided.

Comprehension Questions

1. Exchanging competitive information with competitors is:
 - A. Acceptable
 - B. Questionable
 - C. Unacceptable

2. Which of the following types of information should not be exchanged between competitors?
(choose all that apply)
 - A. Current price lists
 - B. Current costs of production
 - C. Current terms of sale
 - D. Past production statistics

Turn the page and check your answers.

Answers

1. C. Unacceptable
2. A. Current price lists
 B. Current costs of production
 C. Current terms of sale

Opinion: Option D, past production statistics, illustrates the difficulties of clear-cut answers to antitrust questions. The collection and circulation of statistics of past activity on an industry-wide rather than company-specific basis (for example, through a trade association) would be unobjectionable. But, private exchange of production or shipment statistics for very recent periods might suggest an understanding to coordinate policies between competitors and could be deemed clearly unacceptable.

Application Problems

1. Suppose Philo Gourday, who works for a competitor of yours, calls to say he's gotten a request that could mean a big order for him. "How would you go about pricing that?" Philo asks. Your opinion of answering that question:
 - A. Acceptable
 - B. Questionable
 - C. Unacceptable
2. Suppose you run into a competitor's field representative and she asks, in discussing a product of yours that competes with hers, "What are you charging these days?" Your opinion of answering that question:
 - A. Acceptable
 - B. Questionable
 - C. Unacceptable
3. Suppose you receive a call from Dave Hardrock, a plant manager of a competitive firm. He asks you who supplies the raw material for a key ingredient in one of your products. Your opinion of answering this question:
 - A. Acceptable
 - B. Questionable
 - C. Unacceptable

Turn the page and check your answers.

Answers

1. C. Unacceptable

Opinion: *It is a good policy to avoid this type of discussion, especially if such discussions are systematic and for purposes of price alignment.*

2. C. Unacceptable

Opinion: *Same as No. 1 above.*

3. B. Questionable

Opinion: *Occasional exchange of curiosities would not be illegal; but systematic exchange of supplier lists would be unacceptable.*

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Application Problems *(continued)*

4. You head up the Limbo, California operation for your firm. Occasionally, you conduct plant tours for visiting production managers from competing companies. Suppose one of these visiting managers asks, "What does it cost you to get the product out the door these days?" Your opinion on answering this question:
- A. Acceptable
 - B. Questionable
 - C. Unacceptable
5. For years, you have sent your new price lists to your major competitors after sending them to your customers. Your opinion of this practice:
- A. Acceptable
 - B. Questionable
 - C. Unacceptable

Turn the page and check your answers.

Answers

4. C. Unacceptable

Opinion: *Costs of manufacturing the product are competitive information, which could lead to price alignment, and should be strictly avoided.*

5. C. Unacceptable

Opinion: *It is a sound, prudent policy not to exchange price information in this way. Your competitors should get your price information from the marketplace.*

SECTION C Market Division and Customer Allocation

The Sherman Act outlaws market division and customer allocation. This means that you cannot agree with one or more competitors to limit your sales to certain areas, certain products, or certain customers. In other words, you can't agree *not* to compete.

Prohibited agreements include agreements with competitors about whether or how much to bid — either in response to a single request by a single potential customer for bids, or in response to a series of requests by one or more customers. Bid rigging and bid rotation agreements are per se violations of the Sherman Act.

Likewise, exchanges of information with regard to customers and territories may support an inference of market sharing, and should be avoided.

Comprehension Questions

1. Can you agree with a competitor to “promote efficiency” by dividing up a geographical area so that she handles one half and you handle the other?
 - A. Yes
 - B. Maybe
 - C. No
2. Can you and a competing sales manager agree to allocate your four largest customers, two to him and two to you?
 - A. Yes
 - B. Maybe
 - C. No
3. Can you agree with a competitive company to sell your “top of the line” product in Chicago (but not in New York), if they will agree to sell their “top of the line” product in New York (but not in Chicago)?
 - A. Yes
 - B. Maybe
 - C. No

Turn the page and check your answers.

Answers

1. C. No

Opinion: *Agreements between competitors to allocate sales territories are illegal per se.*

2. C. No

Opinion: *Agreements between competitors to allocate customers are illegal per se.*

3. C. No

Opinion: *Agreements between competitors to limit product sales to certain geographic areas are illegal per se.*

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Application Examples

You and Farquhar Marx, of Consolidated (a competitor), make this agreement: You will **actively** market your best-selling product line in the upper Midwest, but will not seek orders for other products; Consolidated will do the same in the lower Midwest.

Opinion: *Unacceptable. This is a geographical market allocation.*

The federal government has put out two requests for sealed bids on supplying two different sites. Marsh Fogg, of Dense & Company, suggests to you that he will bid only on Site A if you will agree to bid only on Site B. You are not really interested, but Fogg persists. Finally, you say okay, but subsequently submit bids for both sites.

Opinion: *Unacceptable. You have made an informal, verbal agreement to allocate bids, and your subsequent decision not to honor that agreement does not alter the fact of the agreement.*

Application Problems

1. One of your district sales managers notices that Bollard & Biffed has begun an aggressive marketing campaign in her district for one of their product lines. She checks around with her customers and finds that Bollard has overproduced that line and must get rid of the overstock. You decide not to compete with Bollard in those particular products, but to push other products which Bollard seems to be ignoring.

Your opinion: A. Acceptable
 B. Questionable
 C. Unacceptable

2. You and Consolidated each have three major customers in the Denver area. The situation has been stable and roughly equal for years. Recently an aggressive young sales manager of yours began pursuing one of Consolidated's customers. Last week, the Denver sales manager for Consolidated called your manager and said: "This is silly. We're spending extra money for no good reason, and it's only going to raise our prices in the long run. For everyone's sake, let's leave well enough alone." Your manager said, "I agree. Let's do it."

Your opinion: A. Acceptable
 B. Questionable
 C. Unacceptable

Turn the page and check your answers.

Answers

1. A. *Acceptable*

Opinion: *As long as the decision not to compete is made unilaterally, it is acceptable.*

2. C. *Unacceptable*

Opinion: *This is an agreement to allocate customers.*

SECTION D Trade Associations

Trade associations can perform useful and legitimate functions. However, meetings of association members provide opportunities for informal gatherings of competitors where prohibited topics, such as prices, might be discussed — consequently creating the risk of an inference of collusion if such gatherings are followed by parallel action. For these reasons, trade association memberships should be limited to those associations that your management has determined serve an important and proper purpose, and where the activities of the association are supervised or reviewed from time to time by legal counsel.

Some trade associations (of which your firm may be a member) are currently bound by certain court decisions resulting from prior antitrust proceedings. The decrees may prohibit many types of activities and conduct that do not necessarily, in and of themselves, constitute a violation of the antitrust laws. You should find out from the association or your company's lawyer whether any association to which your company belongs is subject to an antitrust decree.

If you belong to any trade associations, you should find out before the next meeting whether there are any additional activities of that association that are forbidden, restricted, or required by outstanding court or administrative orders. You can find these things out from the executive secretary of the association or the association's counsel, or from your legal department. Remember that the antitrust laws hold you personally responsible even for actions taken solely for your company.

Likewise, if you are a member of management of a trade association, you should get legal advice regarding your liability with respect to potential illegal actions on the part of the association.

Comprehension Question

1. Which is better? (*choose one*)
- A. You should join as many relevant trade associations as possible regardless of whether they have rules and procedures concerning antitrust compliance.
 - B. You should be careful of your trade association memberships and participation, concentrating on those which are approved by management of your company.

Turn the page and check your answer.

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Answer

1. B. *You should be careful of your trade association memberships and participation, concentrating on those which are approved by management of your company.*

SECTION E What To Do (Part 1)

The fact that you are complying with the law does not mean that your competitors are complying (or want to comply). This section presents information on how to conduct yourself in situations that are potential violations of antitrust laws.

The steps you should take depend somewhat on the situation in which you find yourself. The general situation occurs when you are asked by someone else to do something that is unacceptable from an antitrust standpoint. It is not good enough to simply refuse to participate in actions or agreements that are in violation of antitrust laws; you must also take steps to avoid any conduct that suggests or makes it appear that you have participated.

Your general strategy in protecting yourself and your company is to remove yourself from the situation and to turn the matter over to your legal department. The basic steps of this strategy are:

1. **Refuse** to participate.
2. **Document** the situation, where possible.
3. **Inform** your supervisor and/or your legal department.

This strategy is useful in handling potentially unlawful relationships with competitors, and in most other antitrust areas.

Comprehension Questions

1. When invited by a competitor to participate in an agreement which would be in violation of the antitrust laws, it is sufficient to just refuse to participate.

- Your opinion:** A. Yes
 B. Maybe
 C. No

2. As a **general rule**, the three steps to take in order to protect yourself and the company are:

- (1) _____

(2) _____

(3) _____

Turn the page and check your answer.

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Answers

1. C. No
2. (1) **Refuse** to participate.
(2) **Document** the situation, where possible.
(3) **Inform** your supervisor of the situation, and/or your legal department.

SECTION F What To Do (Part 2)

One variation of the general situation occurs when **you have received a formal written request** to do something that is unacceptable.

- EXAMPLES:
- a. You receive a letter from a competitor asking that you hold off on production until the market firms up.
 - b. A memo is circulated by a competitor suggesting that you raise prices by 10% to keep in line with industry-wide pricing.

In the case of formal written requests such as these, it can be important to prove that you did not participate in the illegal act. But sound practice dictates that your legal department or company counsel actually **refuse** the request. However, you need to **document** the request by keeping the actual letter or memo, and providing a copy when you **inform** your supervisor (or legal department directly).

Comprehension Question

1. What is the most important step you would take in examples a. and b. on the opposite page?
-

Turn the page and check your answer.

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Answer

1. *Inform your supervisor and/or your legal department of the situation.*

SECTION G What To Do (Part 3)

Another variation of the general situation occurs when **you have received an informal request** to do something that is unacceptable.

- EXAMPLES:
- a. You encounter a competitor who asks you to attend a meeting about product pricing.
 - b. You get a phone call from a competitor who asks, "Hey, what price are you quoting today?"

Here again, it may be important to prove later that you did not participate; however, you have an immediate need to remove yourself from the situation. You should **refuse** on the spot, stating your reasons. If possible, **document** the request situation (time, date, people present) for future reference. In any case, **inform** your supervisor and/or legal department promptly thereafter.

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Comprehension Question

1. What would you do in examples a. and b. on the opposite page?

(1) _____

(2) _____

(3) _____

Turn the page and check your answer.

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Answer

1. Check your answer to make sure that you included these three important points:
 - (1) *Politely but firmly **refuse** to respond or participate, and state your reasons for refusing: namely, the risk of illegality.*
 - (2) **Document** the occurrence, if possible.
 - (3) **Inform** your supervisor and/or your legal department of the situation immediately.

SECTION H What To Do (Part 4)

The third variation of the general situation occurs when **you are asked to participate in an unacceptable action while at a trade meeting.**

- EXAMPLES:
- a. During a meeting session, someone formally proposes that the association issue a standard pricing list on a monthly basis and that all member companies agree to stick to the published prices.
 - b. At a trade association luncheon before the meeting, someone brings up the idea of allocating government bids. The people at your table begin to discuss how to work out a system whereby each company would take turns in being the low bidder on government requests for bids.

In such cases, it is essential that you **refuse** to participate in the discussions and that you **refuse** to abide by agreements or understandings reached in the course of them. More specific action is required, however.

In Example a, above, you should specifically **refuse** by openly requesting the group to stop its illegal discussion (and state the reasons for your refusing to participate). **Document** the situation by making sure the meeting secretary records your request and your reasons; if the discussion continues, leave — making sure the secretary records your exit. As soon as possible, **inform** your supervisor and/or legal department of the situation.

Comprehension Question

1. What would you do in examples a. and b. on the opposite page?

(1) _____

(2) _____

(3) _____

Turn the page and check your answer.

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Answer

1. Check your answer to make sure that you included the three main steps:
 - (1) **Refuse** to participate by asking your group to stop the discussion and by stating your reasons; leave the room, if they continue.
 - (2) **Document** the situation, if possible (perhaps by asking the secretary, if present, to record your actions).
 - (3) **Inform** your supervisor and/or notify your legal department as soon as possible thereafter.

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SECTION I **End of Unit Review**

1. You are at a trade association convention. At an informal get-together (over cocktails in a “hospitality suite”), Montag Fratz, an Acme sales manager, brings up Coast Supply, a large wholesaler/retailer. Coast buyers have played you all against each other for years, negotiating bargains, extras, favors, etc. Someone suggests that it sure would be nice to present a united price front to Coast, for a refreshing and overdue change. Several other voices chime in, agreeing that it sure would be nice.

a. Your opinion about participating in the conversation beyond this point:

- A. Acceptable
- B. Questionable
- C. Unacceptable

b. If unacceptable, what steps would you take to protect yourself and the company?

- (1) _____
- (2) _____
- (3) _____

2. You receive a call from Marge La Farge of Acme. She and Mort Gravort of Consolidated, and Chris Hubris of Benson & Phine, are going to meet next week to draw up a recommendation for the next association meeting “to increase profitability” in a problem market. You know for a fact that your company is re-evaluating its pricing schedule and will probably raise its prices soon in that market.

Your opinion about the meeting:

- A. Acceptable
- B. Questionable
- C. Unacceptable

Turn the page and check your answers.

Answers

- 1a. C. Unacceptable

Opinion: *The discussion (if not already illegal) could lead to unlawful results. Any discussion of ways and means to handle Coast Supply could be looked upon as a conspiracy to control terms and conditions of sale. Therefore, you should avoid conversations of this type.*

- 1b. (1) **Refuse** to participate in this discussion and state your reasons for refusing; leave, if necessary.

(2) **Document** the situation, as soon as possible.

(3) **Inform** your supervisor and/or your legal department of the situation.

2. B. Questionable

Opinion: *Attending this meeting would be questionable without more details. If "increase profitability" means a joint industry promotional campaign, the meeting would be acceptable. However, without a clear understanding that there is to be no discussion of any joint or parallel pricing policy, attendance at this meeting would be unacceptable.*

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End of Unit Review *(continued)*

3. You receive a letter from G. Harlowe Bunz, the director of your trade association. It invites you to serve on a special advisory committee to investigate the needs for an industry-wide pricing structure.

a. Your opinion concerning the committee's investigation:

- A. Acceptable
- B. Questionable
- C. Unacceptable

b. What is the most important step you would take to protect yourself and the company?

4. You receive a call from Louise De Frise of Consolidated. She says: "We're trying to firm up the market a bit. How about holding off on selling your line for a couple of weeks until the prices look a little better? Acme and Benson have already agreed."

a. Your opinion of this agreement:

- A. Acceptable
- B. Questionable
- C. Unacceptable

b. What would you do to protect yourself and the company?

(1) _____

(2) _____

(3) _____

Turn the page and check your answers.

Answers

- 3a. C. Unacceptable
- 3b. **Inform** your supervisor and/or your legal department of the situation. (The letter provides a sufficient **document**; legal will **refuse** on behalf of you and your company.)
- 4a. C. Unacceptable
- 4b. (1) **Refuse** to participate, and state your reasons.
- (2) **Document** the situation, as soon as possible.
- (3) **Inform** your supervisor and/or your legal department of the situation.

You have now finished unit two.

**WE SUGGEST THAT YOU TAKE AT LEAST A ONE-HOUR BREAK
BEFORE CONTINUING WITH THIS PROGRAM.**



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Excerpt #3



Includes:

- Final Test & Certifying Statement (portions)

Final Test and Certifying Statement

You have completed all of the instructional material. Now, you should be prepared for a self-administered exam to verify that you have mastered the material presented earlier.

If you have actually worked through and written out or marked your answers in this book, the test should present little difficulty.

When you have taken this test and passed, you will be asked to read and sign a Certifying Statement (in duplicate), which states: "I certify that I have completed the antitrust compliance program, *Antitrust Untangled*, in good faith, and have taken and passed the final test."

Both copies of the Certifying Statement should then be forwarded to your supervisor to be maintained in company files.

Before you begin the final test itself, please read the test procedures on the following page very carefully.

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SECTION A Final Test Procedures

1. Complete the Final Test which begins on page 7-5.
2. After completing the Test, check your answers against the Final Test Scoring Guide, which begins on page 7-15.
3. Write your total score on page 7-23 and determine how you did.
4. If you passed the test, read page 7-35, then sign both copies of the Certifying Statement on pages 7-37 and 7-39. Turn these in to your supervisor (to be maintained in company records).
5. If you did not pass the test, re-study the material you missed and re-take the Final Test, using the second copy on page 7-25.
6. When you have completed the Final Test for the second time, follow steps 2, 3, and 4 above.

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NOTES

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SECTION B **Final Test**

1. One of your largest customers sends a letter to you. In the letter, he complains about a competitor of his, Halpern Corp., who has not been observing the suggested resale prices. He asks you to bring pressure to bear upon Halpern to observe the resale price list. You have been thinking of dropping Halpern anyway, for reasons of your own.

a. Your opinion of bringing pressure to bear on Halpern to observe the resale price:

- A. Acceptable
- B. Questionable
- C. Unacceptable

b. Your opinion of dropping Halpern at this time:

- A. Acceptable
- B. Questionable
- C. Unacceptable

c. What would you do to protect yourself and the company from the letter that you received?

d. What would you do to protect yourself and the company if you decide to drop Halpern?

2. Which of the following types of activities have been found to be in violation of Section 5 of the FTC Act? *(choose all that apply)*
- A. False advertising
 - B. Commercial espionage
 - C. Harassing of a competitor with lawsuits
 - D. Shipment of unordered goods
 - E. Disparaging competitors to their customers by advertising
3. Which of the following may be illegal? *(choose all that apply)*
- A. Guaranteeing a customer that no one else will sell your products in his area
 - B. Assigning and enforcing exclusive areas
4. If a buyer lies to a supplier about a low competitive offer and the supplier (in good faith) relies on the buyer's representations, having no other acceptable method of confirming the offer, who is responsible under price discrimination laws? *(choose all that apply)*
- A. The buyer
 - B. The seller
 - C. Neither
 - D. Both
5. To whom can you pay a brokerage fee? *(choose all that apply)*
- A. A customer
 - B. A customer's agent
 - C. A customer's representative
 - D. A broker independent of any of your customers
 - E. A broker under control of one or more of your customers

6. Suppose a stranger shows you a federal agent's badge and says, "We're investigating a little matter regarding your competitor, Acme. I'd like to ask you a few questions about any conversations you have had with them over the past six months."

What should you do?

7. When you are attempting to meet competition's legal prices, which of the following are not good meeting competition defenses? (*choose all that apply*)

- A. Meeting a competitor's offer
- B. Beating a competitor's offer
- C. Dealing with a specific customer
- D. Needing the deal because you are temporarily overstocked
- E. Retaining old customers

8. a. You are considering a major promotional campaign for your southeast region dealers. You plan to offer each dealer the same size display, regardless of the volume of product which each purchases.

Your opinion of this offer:

- A. Acceptable
- B. Questionable
- C. Unacceptable

- b. What should you do to protect yourself and the company?

9. After public dissemination of its price list, one of your competitors sends a copy to you, on a regular basis. She has consulted her attorney, who has told her it is perfectly legal to do this. She wants to continue sending her price list to you in this manner, and she would like you to send a copy of your list after you have made it public.

a. Your opinion of receiving her price lists after she makes them public:

- A. Acceptable
- B. Questionable
- C. Unacceptable

b. Your opinion of sending her your price lists after making them public:

- A. Acceptable
- B. Questionable
- C. Unacceptable

c. What steps would you take to protect yourself and the company?

10. Which is the most accurate statement? (*choose one*)

- A. You can sell below cost if you want to; you're allowed to lose money.
- B. You can never sell below cost.
- C. You cannot sell below cost to wipe out a competitor.

11. At a trade association meeting, someone makes a motion that a committee should investigate the possibility of boosting prices by limiting production for a while, and you are asked to concur.

a. Your concurrence would be:

- A. Acceptable
- B. Questionable
- C. Unacceptable

b. What steps would you take to protect yourself and the company?

12. An agreement providing for continued exclusive representation in a defined territory is: (choose one)

- A. An illegal monopoly
- B. A lawful contract providing that no restraints are placed on the price at which, or the customer to whom, the buyer may resell
- C. An agreement to restrain trade

13. An agreement requiring a customer not to handle a competing product is:

- A. Acceptable
- B. Questionable
- C. Unacceptable

14. There must be written documentation of an agreement between competitors in order to prove a conspiracy to fix prices.

- A. True .
- B. False

15. You receive a call from Marcia Williams asking the price on 41,000 units of product. After you quote the price, Marcia says, "Pacific will sell that quantity for \$63 less. Can't you meet that price?"

a. Your opinion of meeting the price:

- A. Acceptable
- B. Questionable
- C. Unacceptable

b. What steps would you take to protect yourself and the company?

16. A conspiracy charge cannot be brought against you unless you live up to the terms of the agreement.

- A. True
- B. False

17. Your production manager and sales manager get together. The production manager says, "We have overproduced on Type 4 and Type 8 product, but we can't quite keep up with orders for Type 2, the regular stuff. When someone wants to order regular Type 2, tell him we're having a package deal right now and that, in order to get a carload of plain, he has to take half a carload of Type 4 and half a carload of Type 8, also."

Your opinion of this arrangement:

- A. Acceptable
- B. Questionable
- C. Unacceptable

18. As an individual, how much can you be fined for an antitrust violation?

- A. \$150,000
- B. \$500,000
- C. \$1,000,000

19. Marlene Doyle, of Acme's sales department, calls you and says, "Look, we're always beating our brains out trying to undermine each other, underprice each other, etc. Let's get together and divide up the area. You take half the customers, I'll take the other half. Then we can relax."

a. Your opinion of this arrangement:

- A. Acceptable
- B. Questionable
- C. Unacceptable

b. What would you do to protect yourself and the company?

20. Peter O'Connell of AAA Armbuster, a customer of yours, calls to say, "Every year, as part of our advertising campaign, we like to make some kind of charitable contribution. This year, we decided to give to the Girl Scouts. If you can let us have a special discount on some products, I think I can honestly say that we would be very grateful. And, of course, we'll make sure that your company gets proper credit. Since this is a unique situation and we don't expect to profit from it, we don't think you need to make the discount available to others."

Your opinion of the allowance, if not offered to others:

- A. Acceptable
- B. Questionable
- C. Unacceptable

21. Which is better? (*choose one*)

- A. You should join as many relevant trade associations as possible, regardless of whether they have rules and procedures concerning antitrust compliance.
- B. You should be careful of your trade association memberships and participation, concentrating on those that are approved by management of your company.

22. Jim Gardner of the Tom Wenton Corporation agrees to purchase \$15,000 worth of products from you, and although nothing has been said, is hopeful you will in turn purchase \$15,000 worth of material from him.

a. Your opinion:

- A. Acceptable
- B. Questionable
- C. Unacceptable

b. What would you do to protect yourself and the company?

23. You receive a letter from Helen Erickson at Acme, a competitor. She suggests that you drop a customer, Super Supply, for "moral and ethical" reasons. Assume that you yourself have no other reason for dropping Super Supply.

a. Your opinion of the suggested action:

- A. Acceptable
- B. Questionable
- C. Unacceptable

b. What steps would you take to protect yourself and the company?

24. Which of the following are legal? (choose all that apply)

- A. Having the same freight charges as one or more competitors
- B. Agreements between competitors regarding terms and conditions of sale
- C. Agreements between competitors regarding discounts
- D. Having the same prices as one or more competitors
- E. Agreements between competitors regarding prices

25. Are you a member of any trade associations?

- A. Yes
- B. No

If your answer is "yes", what do you need to check out before the next meeting?

You have completed the Final Test.

TURN THE PAGE AND SCORE YOUR ANSWERS.

NOTES






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SECTION C Final Test Scoring Guide

In scoring this test, a rating system has been used to allow partial credit for some answers. The reason for this is that some answers are “less wrong” or “more correct” than others. Space has been allowed in the right-hand margin for you to keep track of your points.

<p>1a. Give yourself the applicable points:</p> <p><input type="checkbox"/> A. <i>Acceptable</i> 0 points</p> <p><input checked="" type="checkbox"/> B. <i>Questionable</i> 4 points</p> <p><input type="checkbox"/> C. <i>Unacceptable</i> 0 points</p>	<p style="text-align: center;"> <input type="text"/> Your points </p>
<p>1b. Give yourself the applicable points: (maximum 4 points)</p> <p><input type="checkbox"/> A. <i>Acceptable</i> 0 points</p> <p><input checked="" type="checkbox"/> B. <i>Questionable</i> 4 points</p> <p><input type="checkbox"/> C. <i>Unacceptable</i> 0 points</p>	<p style="text-align: center;"> <input type="text"/> Your points </p>
<p>1c. Give yourself 1 point if you said:</p> <p><i>Inform your supervisor and/or notify your legal department of the situation, documenting the situation.</i> 1 point</p>	<p style="text-align: center;"> <input type="text"/> Your points </p>
<p>1d. Give yourself 1 point if you said:</p> <p><i>Check with your supervisor and/or legal department first.</i> 1 point</p> <p>Reference: Unit Three</p>	<p style="text-align: center;"> <input type="text"/> Your points </p>

<p>2. Give yourself 1 point for each item checked: (maximum 5 points)</p> <p><input checked="" type="checkbox"/> A. <i>False advertising</i> 1 point</p> <p><input checked="" type="checkbox"/> B. <i>Commercial espionage</i> 1 point</p> <p><input checked="" type="checkbox"/> C. <i>Harassing of a competitor with lawsuits</i> 1 point</p> <p><input checked="" type="checkbox"/> D. <i>Shipment of unordered goods</i> 1 point</p> <p><input checked="" type="checkbox"/> E. <i>Disparaging competitors to their customers by advertising</i> 1 point</p> <p>Reference: Unit Five</p>	<div style="text-align: center;"> <input type="text"/> Your points </div>
<p>3. Give yourself 1 point for each item checked: (maximum 2 points)</p> <p><input checked="" type="checkbox"/> A. <i>Guaranteeing a customer that no one else will sell your products in his area</i> 1 point</p> <p><input checked="" type="checkbox"/> B. <i>Assigning and enforcing exclusive areas</i> 1 point</p> <p>Reference: Unit Three</p>	<div style="text-align: center;"> <input type="text"/> Your points </div>
<p>4. Give yourself 1 point if you checked:</p> <p><input checked="" type="checkbox"/> A. <i>The buyer</i> 1 point.</p> <p>Reference: Unit Four</p>	<div style="text-align: center;"> <input type="text"/> Your points </div>
<p>5. Give yourself 1 point if you checked:</p> <p><input checked="" type="checkbox"/> D. <i>A broker independent of any of your customers</i> 1 point</p> <p>Reference: Unit Four</p>	<div style="text-align: center;"> <input type="text"/> Your points </div>
<p>6. Give yourself 1 point if you said:</p> <p><i>Inform your supervisor and/or legal department</i> 1 point</p> <p>Reference: Unit Six</p>	<div style="text-align: center;"> <input type="text"/> Your points </div>

<p>7. Give yourself 1 point if you checked:</p> <p><input checked="" type="checkbox"/> <i>D. Needing the deal because you are temporarily overstocked</i> 1 point</p> <p>Reference: Unit Four</p>	<div style="text-align: center;">  Your points </div>
<p>8a. Give yourself the applicable points:</p> <p><input checked="" type="checkbox"/> <i>A. Acceptable</i> 4 points</p> <p><input type="checkbox"/> <i>B. Questionable</i> 0 points</p> <p><input type="checkbox"/> <i>C. Unacceptable</i> 0 points</p>	<div style="text-align: center;">  Your points </div>
<p>8b. Not applicable/no points</p> <p>Reference: Unit Four</p>	
<p>9a. Give yourself the applicable points: (maximum 4 points)</p> <p><input type="checkbox"/> <i>A. Acceptable</i> 0 points</p> <p><input checked="" type="checkbox"/> <i>B. Questionable</i> 2 points</p> <p><input checked="" type="checkbox"/> <i>C. Unacceptable</i> 4 points</p>	<div style="text-align: center;">  Your points </div>
<p>9b. Give yourself the applicable points: (maximum 4 points)</p> <p><input type="checkbox"/> <i>A. Acceptable</i> 0 points</p> <p><input checked="" type="checkbox"/> <i>B. Questionable</i> 2 points</p> <p><input checked="" type="checkbox"/> <i>C. Unacceptable</i> 4 points</p>	<div style="text-align: center;">  Your points </div>
<p>9c. Give yourself 1 point for each of the following items: (maximum 3 points)</p> <p>(1) Refuse and state your reasons. 1 point</p> <p>(2) Document. 1 point</p> <p>(3) Inform your supervisor and/or notify your legal department. 1 point</p> <p>Reference: Unit Two</p>	<div style="text-align: center;">  Your points </div>

<p>10. Give yourself 1 point if you checked:</p> <p><input checked="" type="checkbox"/> C. <i>You cannot sell below cost to wipe out a competitor.</i> 1 point</p> <p>Reference: Unit Four</p>	<div style="text-align: center;"> <input type="text"/> Your points </div>
<p>11a. Give yourself the applicable points:</p> <p><input type="checkbox"/> A. <i>Acceptable</i> 0 points</p> <p><input type="checkbox"/> B. <i>Questionable</i> 0 points</p> <p><input checked="" type="checkbox"/> C. <i>Unacceptable</i> 4 points</p>	<div style="text-align: center;"> <input type="text"/> Your points </div>
<p>11b. Give yourself 1 point for each of the following items: (maximum 3 points)</p> <p>(1) Refuse to participate by asking your group to stop the discussion and by stating your reasons; leave the room if they continue. 1 point</p> <p>(2) Document the situation, if possible (perhaps by asking the secretary, if present, to record your actions. 1 point</p> <p>(3) Inform your supervisor and/or notify your legal department as soon as possible thereafter. 1 point</p> <p>Reference: Unit Two</p>	<div style="text-align: center;"> <input type="text"/> Your points </div>
<p>12. Give yourself 1 point if you checked:</p> <p><input checked="" type="checkbox"/> B. <i>A lawful contract, providing that no restraints are placed on the price at which, or the customer to whom, the buyer may resell.</i> 1 point</p> <p>Reference: Unit Three</p>	<div style="text-align: center;"> <input type="text"/> Your points </div>
<p>13. Give yourself the applicable points: (maximum 4 points)</p> <p><input type="checkbox"/> A. <i>Acceptable</i> 0 points</p> <p><input checked="" type="checkbox"/> B. <i>Questionable</i> 4 points</p> <p><input checked="" type="checkbox"/> C. <i>Unacceptable</i> 2 points</p> <p>Reference: Unit Three</p>	<div style="text-align: center;"> <input type="text"/> Your points </div>

<p>14. Give yourself 1 point if you checked:</p> <p><input checked="" type="checkbox"/> <i>B. False</i> 1 point</p> <p>Reference: Unit One</p>	<p><input type="checkbox"/></p> <p>Your points</p>
<p>15a. Give yourself the applicable points:</p> <p><input checked="" type="checkbox"/> <i>A. Acceptable</i> 4 points</p> <p><input type="checkbox"/> <i>B. Questionable</i> 0 points</p> <p><input type="checkbox"/> <i>C. Unacceptable</i> 0 points</p>	<p><input type="checkbox"/></p> <p>Your points</p>
<p>15b. Give yourself 1 point if you said:</p> <p><i>Document Pacific's offer.</i> 1 point</p> <p>Reference: Unit Four</p>	<p><input type="checkbox"/></p> <p>Your points</p>
<p>16. Give yourself 1 point if you checked:</p> <p><input checked="" type="checkbox"/> <i>B. False</i> 1 point</p> <p>Reference: Unit One</p>	<p><input type="checkbox"/></p> <p>Your points</p>
<p>17. Give yourself the applicable points: (maximum 4 points)</p> <p><input type="checkbox"/> <i>A. Acceptable</i> 0 points</p> <p><input checked="" type="checkbox"/> <i>B. Questionable</i> 4 points</p> <p><input checked="" type="checkbox"/> <i>C. Unacceptable</i> 2 points</p> <p>Reference: Unit Three</p>	<p><input type="checkbox"/></p> <p>Your points</p>
<p>18. Give yourself 1 point if you checked:</p> <p><input checked="" type="checkbox"/> <i>C. \$1,000,000</i> 1 point (<i>And individuals convicted of price-fixing are <u>very likely</u> to go to jail.</i>)</p> <p>Reference: Unit One</p>	<p><input type="checkbox"/></p> <p>Your points</p>

<p>19a. Give yourself the applicable points:</p> <p><input type="checkbox"/> A. <i>Acceptable</i> 0 points</p> <p><input type="checkbox"/> B. <i>Questionable</i> 0 points</p> <p><input checked="" type="checkbox"/> C. <i>Unacceptable</i> 4 points</p>	<p style="text-align: center;"><input type="text"/></p> <p style="text-align: center;">Your points</p>
<p>19b. Give yourself 1 point for each of the following items: (maximum 3 points)</p> <p>(1) Refuse and state your reasons. 1 point</p> <p>(2) Document 1 point</p> <p>(3) Inform your supervisor and/or notify your legal department 1 point</p> <p>Reference: Unit Two</p>	<p style="text-align: center;"><input type="text"/></p> <p style="text-align: center;">Your points</p>
<p>20. Give yourself the applicable points:</p> <p><input type="checkbox"/> A. <i>Acceptable</i> 0 points</p> <p><input type="checkbox"/> B. <i>Questionable</i> 0 points</p> <p><input checked="" type="checkbox"/> C. <i>Unacceptable</i> 4 points</p> <p>Reference: Unit Four</p>	<p style="text-align: center;"><input type="text"/></p> <p style="text-align: center;">Your points</p>
<p>21. Give yourself 1 point if you checked:</p> <p><input checked="" type="checkbox"/> B. <i>You should be careful of your trade association memberships and participation, concentrating on those that are approved by management of your company.</i> 1 point</p> <p>Reference: Unit Two</p>	<p style="text-align: center;"><input type="text"/></p> <p style="text-align: center;">Your points</p>
<p>22a. Give yourself the applicable points:</p> <p><input checked="" type="checkbox"/> A. <i>Acceptable</i> 4 points</p> <p><input type="checkbox"/> B. <i>Questionable</i> 0 points</p> <p><input type="checkbox"/> C. <i>Unacceptable</i> 0 points</p>	<p style="text-align: center;"><input type="text"/></p> <p style="text-align: center;">Your points</p>
<p>22b. Not applicable/no points</p> <p>Reference: Unit Three</p>	

<p>23a. Give yourself the applicable points:</p> <p><input type="checkbox"/> A. <i>Acceptable</i> 0 points</p> <p><input type="checkbox"/> B. <i>Questionable</i> 0 points</p> <p><input checked="" type="checkbox"/> C. <i>Unacceptable</i> 4 points</p> <p>Reference: Unit Three</p>	<p style="text-align: center;"> <input type="text"/> Your points </p>
<p>23b. Give yourself 1 point if you said:</p> <p><i>Inform your supervisor and/or notify your legal department of the situation (documenting, if possible).</i> . . . 1 point</p> <p>Reference: Unit Three</p>	<p style="text-align: center;"> <input type="text"/> Your points </p>
<p>24. Give yourself 1 point for each item checked: (maximum 2 points)</p> <p><input checked="" type="checkbox"/> A. <i>Having the same freight charges as one or more competitors</i> 1 point</p> <p><input checked="" type="checkbox"/> D. <i>Having the same prices as one or more competitors</i> 1 point</p> <p>Reference: Unit Two</p>	<p style="text-align: center;"> <input type="text"/> Your points </p>
<p>25. Do not score this answer!</p> <p><i>If you are a member of any trade association, you should find out if there are any activities of that association that are forbidden, restricted, or required by outstanding judgement or consent decrees.</i></p> <p>Reference: Unit Two</p>	

ADD UP YOUR POINTS, THEN TURN THE PAGE AND POST YOUR TOTAL.

NOTES

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SECTION D Final Test Results

Maximum possible points:

84

Your total score:

If you scored 75 or more:

1. You have successfully completed the test.
2. Read page 7-35, then sign both copies of the Certifying Statement on pages 7-37 and 7-39. Give them to your supervisor.

If you scored 74 or less:

1. Look up and re-study all the items you missed. Use the references given in the Final Test Scoring Guide (pages 7-15 through 7-21) as an aid.
2. Make sure you understand each answer.
3. Re-take the test (using the second copy provided) starting on page 7-25.