THE AMERICAN INSTITUTE OF ARCHITECTS ANTITRUST STATEMENT

March 2022

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POLICY STATEMENT

It is the practice of The American Institute of Architects (AIA) and its members to comply strictly with all laws, including federal and state antitrust laws that apply to AIA operations and activities.

COMPLIANCE

Compliance with the letter and spirit of the antitrust laws is an important goal of AIA and is essential to maintaining AIA's reputation for the highest standards of ethical conduct.

Responsibility for Antitrust Compliance. While the Office of Legal and Business Affairs provides guidance on antitrust matters, each of us bears responsibility to ensure our actions comply with the antitrust laws. The program cannot work unless each of us does our part.

Communicating Antitrust Statement and Procedures. Each AIA officer and employee receives this statement. AIA components and members whose responsibilities with AIA might require knowledge of the antitrust laws may also receive this statement. You should promptly sign and return the acknowledgment in the attached form (Attachment A).

Compliance Monitoring and Enforcement. The Office of Legal and Business Affairs monitors AIA operations as appropriate to help ensure compliance with these procedures and the antitrust laws. We will conduct prompt investigations into any activities that may violate the antitrust laws. Any such violations may result in immediate disciplinary action for AIA members and employees.

AIA recognizes that its employees are an important source of information about possible antitrust violations in connection with AIA's activities. It, therefore, requires that employees promptly report any suspected violations of the antitrust laws. If you have an issue you would like to report, please contact the Office of Legal and Business Affairs.

PROCEDURES

The procedures discussed below update AIA's continuing antitrust compliance program and are to be observed by each of you—AIA officers and employees, AIA members, and other persons—who may be involved in any way in AIA's operations and activities.

ACTIVITIES THAT UNLAWFULLY RESTRAIN COMPETITION

AIA operations and activities must not be used to reach or further agreements among members (or other persons) in any of the following areas:

Prices for products or services
The manner in which AIA members price their services
Members' costs of employment, including wages, and benefits
Not hiring or soliciting one another's employees
Allocations of markets, customers, territories, or products
Collective refusals to deal with anyone
Limitations on production or output
Tying arrangements

ACTIVITIES THAT ALSO MAY BE UNLAWFUL

AIA operations and activities must not be used to reach or further agreements among members or other persons in any of the following areas:

Exclusive dealing arrangements
Reciprocal sales and purchase arrangements
Product standardization, including ESG-related product changes
Prices at which products or services should be resold

To avoid even the appearance of impropriety, the subjects indicated above must not be discussed or addressed in the course of any AIA-related operations, events, or other activities without the prior approval of counsel.

Do not discuss any subjects that might raise antitrust concerns (including prices, wages or conditions of employment, market allocations, refusals to deal, and the like) unless you have received specific clearance from counsel in advance. If somebody begins discussing a sensitive subject, do not allow the discussion to continue. If the discussion does continue, do not allow the meeting to continue.

THE ANTITRUST LAWS: A BASIC FRAMEWORK

Antitrust laws are designed to promote vigorous and fair competition and provide American consumers with the best combination of price and quality. These procedures focus mainly on the federal antitrust and trade regulation laws created by the Sherman Act, Clayton Act, Robinson-Patman Act and Federal Trade Commission Act. Most states and the District of Columbia have their own antitrust laws, which frequently (although not always) parallel the federal laws.

The U.S. Department of Justice is authorized to prosecute criminally Sherman Act violators, who may be severely fined and, in the case of individuals, imprisoned. In addition, the Justice Department, the Federal Trade Commission, state attorneys general and private parties may bring civil suits and recover three times (treble) their actual damages, court costs and (in private suits) their attorneys' fees from corporations and individuals who have violated the federal antitrust laws. The Federal Trade Commission also has its own statutory authority to enforce antitrust laws through administrative proceedings. Further, antitrust investigations and litigation are nearly always distracting, tedious, time-consuming, and expensive, even if no violation is ultimately found.

POSSIBLE ANTITRUST VIOLATIONS TO AVOID

Agreements That Restrain Competition—Section 1 of the Sherman Act

The most common antitrust violations of which you should be aware fall within Section 1 of the Sherman Act. They result from agreements—typically with competitors, customers, or suppliers—that unreasonably restrain competition. Thus, the antitrust laws prohibit AIA and its members from agreeing to do certain things that they could legally do if they acted independently. Agreements to restrain trade can be for any market in which an entity participates, including for selling architectural services, for hiring and promoting employees, or for purchasing inputs like software, materials, or office furniture.

Any type of agreement, understanding or arrangement between competitors, whether written or oral, formal or informal, express or implied, that limits competition is subject to antitrust scrutiny. Any attempt to reach such an agreement may be unlawful, even if it is unsuccessful.

Some Troublesome Agreements

The courts have found that certain types of agreements always (or almost always) violate the antitrust laws. They include agreements of the kinds discussed here.

Price-fixing and Bid-rigging Agreements. Any agreement between competitors on prices charged to others for products or services violates the antitrust laws. Every direct price-fixing agreement is unlawful, whether it is meant to raise, lower, or just stabilize prices. Agreements may be unlawful as well even if they only indirectly affect prices because they involve such things as discounts, promotional allowances, standardization of customer or delivery services, or uniform credit terms and billing practices. Collusive bidding practices (or "bid-rigging") are a form of unlawful price fixing. It is also unlawful for competitors to agree on the prices they will pay for products or services sold by other persons.

Wage-fixing and 'No-Poach' Agreements. The prohibition on price-fixing and bid-rigging agreements also apply to the labor markets. As a result, any direct agreement to lower, fix, or even just stabilize labor costs, such as wages or benefits, is unlawful. It is also unlawful for employers to agree with one another not to recruit or solicit another's employees.

Agreements to Allocate Markets, Customers, Territories, or Products. It is unlawful for competitors to agree to divide or allocate customers or territories. An agreement among competitors is also unlawful if it provides that they will refrain from selling a certain product generally, in any geographic territory, or to any category of customer.

Group Boycotts and Collective Refusals to Deal. Agreements among independent entities that they will boycott or refuse to buy from particular suppliers, or sell to particular customers, or to disadvantage another competitor are generally prohibited by the antitrust laws. This does not necessarily preclude sharing certain information about a supplier or customer (*e.g.*, concerning its credit history) so long as there is no discussion—and no agreement—on whether or not to deal with it. Firms and individual architects must make independent decisions about with whom they will do business.

Agreements to Control Production. Agreements among competitors to increase or restrict services or production levels are always problematic under the antitrust laws. The same is true of agreements among competitors to limit the quality of production, restrict the products or services sold to a particular customer, refrain from introducing new products and services or eliminating old ones, or accelerate the introduction or withdrawal of a product or service.

Tying Arrangements. A "tie-in" or "tying" arrangement permits a buyer to purchase one (tying) product or service only if it agrees to buy a second, distinct (tied) product or service from the seller. Sometimes these types of arrangements can be justified, but they should generally be avoided.

Other Types of Agreements That Also May Raise Concerns

Here are some examples—though not a complete list—of agreements whose legality depends on the circumstances involved.

Exclusive Dealing. Exclusive dealing arrangements come in various forms. Some might require a customer to sell exclusively the products of a particular company or coerce a supplier into refusing to sell to its customer's competitors. Others might compel a customer to purchase all of its requirements for a particular product or service from a single supplier.

Reciprocity. In a reciprocal dealing arrangement, a customer makes purchases from a supplier only on the condition that the supplier will buy products or services from the customer. Such reciprocal arrangements are particularly troublesome when they are openly or implicitly coerced.

Product Standardization. Competitors may create lawful agreements to establish industry product standards. Those agreements may cause problems under the antitrust laws, however, if they have an anticompetitive effect (*e.g.*, where standardization makes it easier for competitors to set common prices, where the standardization lowers output by limiting the kinds of products offered, or where standardization has the effect of increasing prices).

Resale Price Agreements. An agreement between a seller and a customer on the price at which the customer will resell a product can be problematic. The federal antitrust laws no longer automatically prohibit resale price agreements. But some states, including California, Illinois, and New York, look upon them unfavorably. The seller may, however, suggest a resale price so long as it is completely clear that the customer is free to accept or reject the suggestion and will not be penalized if it decides to disregard the suggestion.

Conduct That May Violate the Antitrust Laws Even Without an Agreement of Any Type

You should also be aware of antitrust law violations that may take place even where there is no agreement among competitors or anyone else. The most common violations of that type are briefly discussed here.

Monopolization and Abuse of Dominance. The law of monopolization (including attempts to monopolize and agreements to monopolize) is extremely complicated. Basically, when any enterprise enjoys a strong market position for a particular product, it should be concerned about questions of monopolization. New York may also soon amend its state antitrust law to prohibit a dominant firm from "abusing" that dominance. The law of monopolization often comes into play in mergers or acquisitions for companies that actually compete or could compete with each other. No enterprise should take actions that might be viewed as evidence of intent to acquire or maintain monopoly power in a particular market, to drive a particular competitor out of business, or to prevent somebody from entering the market.

Price Discrimination. The Robinson-Patman Act and some state antitrust laws restrict a seller from charging different prices for its goods to competing customers at the same point in time. (This law, however, does not apply to the sale of services.) Those laws also forbid sellers in certain circumstances to discriminate when they offer promotional materials, services, or other inducements to individual customers in an effort to have the customers engage in in-house promotions or advertising. Buyers are in turn prohibited from knowingly inducing or receiving a discriminatory price, promotional allowance, or service. These general prohibitions have a number of exceptions, which are too complex to be discussed here.

Unfair Competition. The Federal Trade Commission Act (also called the "FTC Act") prohibits all "unfair methods of competition" and "unfair or deceptive acts or practices." The FTC Act covers antitrust violations like those discussed above, but also forbids conduct that falls short of those violations. The FTC Act prohibits all forms of deceptive or misleading advertising and trade practices, such as disparaging a competitor's product, harassing a customer or competitor, and stealing trade secrets and customer lists. California, and other states, also prohibit "unfair competition," an amorphous concept that largely overlaps with conduct prohibited by the FTC Act.

ANTITRUST MATTERS OF INTEREST TO PROFESSIONAL SOCIETIES

A number of antitrust cases against professional societies and trade associations have focused on situations that go to the heart of what those organizations are about.

Membership

Because a professional society or a trade association by its very nature provides certain commercial and other benefits to its members, the denial of membership to qualified competitors of the members could violate antitrust laws. Membership should be open to all who satisfy basic membership requirements, and any decision to deny membership or expel a member should be reviewed with counsel. All persons in any class of membership should have an equal opportunity to participate in AIA activities and benefits. Certain programs and activities may also need to be opened to non-members if their exclusion would put them at an unreasonable Competitive Disadvantage To Members.

Collection and Dissemination of Data

Statistical data may obviously be compiled for legitimate purposes. Statistical information also may cause problems from an antitrust standpoint, however, if their use somehow harms competition. This might happen, for instance, if statements in AIA publications were to suggest what production, price or specific market demand should or would be in the future. Broadly speaking, the farther removed the data are from prices and costs, the less company-specific they are, the more historical they are, and the wider their public dissemination is, the less likely it is that they will raise antitrust problems. As a general rule, particular market-sensitive data supplied by individual members should never be discussed or disseminated beyond AIA without advice of counsel.

Codes, Standards, and Certification Programs

Reasonable industry codes, standards and certification programs may promote quite valid interests, including the protection of safety, health and the environment, and the maintenance of high standards of ethics and conduct. You should nonetheless be alert for anticompetitive effects that a particular standard may have. For example, a product standard that is unreasonably biased in favor of one manufacturer's product at the expense of another may raise significant antitrust problems. Further, a product standard that effectively limits competition for particular types of products should be avoided. In addition, to the extent such codes, standards, and certifications are *permitted* or *authorized*, but not *mandated*, by local, state, and federal governments, they may fall outside the governmental immunity to the antitrust laws. Care should therefore be used both in creating and applying codes, standards, and certification criteria, and in influencing other organizations as they do so.

Participation on State Regulatory Boards

State licensing boards play an important role in regulating the profession through accreditation and in protecting the public welfare through basic quality standards. States in their sovereign capacity often delegate responsibility for overseeing these important functions to a board comprised of industry professionals. However, state regulatory boards quickly draw antitrust ire when it appears that self-interested incumbents are using licensing requirements as a tool to exclude new entrants. AIA members should be wary of self-interested decisions when participating on state regulatory boards and should not coordinate within AIA related to the activities of independent state licensing boards.

Marketing and Communications

Like the other activities discussed above, marketing and communications serve valid interests, but can raise antitrust problems under some circumstances. Be careful that all advertising, announcements, and other communications that might affect competition are accurate and are in no way deceptive or misleading.

Government Relations

There is a constitutional right to petition legislatures and government agencies for action, and, if properly undertaken, such activity is not subject to antitrust laws. The right to petition, however, does not provide unlimited antitrust protection. If the activity in question is not really designed to achieve government action but rather amounts to a sham used to injure competition, for example, it may raise serious antitrust problems. Moreover, activity is not immunized from the antitrust laws simply because a government representative encourages and happens to participate in it.

Some Practical Guidelines on Preventing Problems at Meetings, in Records, and in Contacts with Others

Meetings, communications, and contacts that touch on antitrust matters present special challenges. A simple example will illustrate this. Suppose that members were to discuss their prices at a meeting or in a document, and their prices increased shortly afterward. An enforcement agency or jury might view this as evidence that their discussions led to an agreement on pricing and, thus, violated the antitrust laws. In a case like that, the mere *appearance* of illegality—even when the parties may *in fact* have done nothing wrong—can cause serious problems. The guidelines that follow are designed to help you not only comply with the antitrust laws, but also avoid even the appearance of impropriety.

Meetings. AIA meetings regularly bring together members and others who are potential or actual competitors.

For some meetings where subjects may stray into sensitive areas, certain ground rules should be followed to eliminate any suspicion that a particular meeting might be used for anticompetitive purposes:

- Prepare an agenda and have AIA counsel review it before the meeting
- Provide a copy of "The American Institute of Architects Antitrust Statement" to meeting attendees
- Have an AIA staff member attend the meeting
- Invite legal counsel to attend if the meeting might involve matters having to do with competition
- Follow the agenda at your meeting, with departures from the agenda only if counsel approves
- Keep accurate minutes, and have counsel review them before they are put into final form and circulated

When members get together and talk before or after formal meetings, there should be no discussions that raise antitrust concerns even in such informal settings. This includes in-person oral discussions, as well as informal written communications such as text messages, email, instant chat, message boards and social media posts.

Outside Contacts. Whenever you have contact with outside parties on antitrust matters, always keep in mind that even completely innocent behavior may be misinterpreted. If a government representative, a private attorney, investigator, or any other outside person contacts you for information that might relate in some way to antitrust subjects, tell that person that you are not authorized to provide the information but will have an authorized person respond. You should then immediately contact legal counsel.

Records. Records refer to any of the various communications people record in tangible form every day—in documents, e-mail, video, audio recordings (such as voice mail), text messages, and the like. These records are sometimes inaccurate, imprecise, and subject to misinterpretation. You should prepare every record with the thought that it might have to be produced to government officials or plaintiffs' lawyers, who will interpret your language in the worst possible way. The following guidelines may help you avoid problems in matters involving competition:

- Avoid creating unnecessary records
- Use language that is clear, simple, and accurate
- Avoid language that might be misinterpreted to suggest that AIA condones or is involved in any anticompetitive behavior
- As much as possible, limit yourself to facts and avoid offering opinions
- Do not use joking or aggressive language about competitors (*e.g.*, "let's kill our competitors")
- Do not use language that might arouse suspicion (*e.g.*, "For limited distribution" or "Destroy after reading")
- Do not speculate about the legality of specific conduct
- Do not violate AIA's record management policy when deciding how to handle, maintain or dispose of any record
- Do not hesitate to contact counsel with any questions about documents, data, or other records

QUESTIONS

If you have a question about whether any of AIA's operations or activities may violate the antitrust laws, contact us. We look forward to working with you.

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ATTACHMENT A

THE AMERICAN INSTITUTE OF ARCHITECTS ANTITRUST STATEMENT ACKNOWLEDGEMENT

I have received and read and agree to comply with The American Institute of Architects Antitrust Statement.

Signed: _____

Printed Name: _____

Date: _____

Please sign and complete this form

Return it to the Office of Legal and Business Affairs.