

**Privileged and Confidential
Legal Document**

U.S. GREEN BUILDING COUNCIL
ANTITRUST COMPLIANCE POLICY

ANTITRUST COMPLIANCE POLICY

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TO MY FELLOW MEMBERS:

This booklet contains an important U.S. Green Building Council policy regarding antitrust law compliance. The antitrust compliance policy has been developed by our attorneys and approved by the Board of USGBC. It should be studied, understood and followed by each member of USGBC, the employees of each member who are involved in the activities of USGBC, and the officers and employees of USGBC. This policy will be incorporated in USGBC's employee handbook.

This policy is consistent with our broader USGBC philosophy - that is, to conduct our relations and activities, both internal and external, with high legal and ethical standards.

Please read this statement carefully and with the broader principle in mind. It is intended to provide direction in areas of particular concern, and should not be construed with an eye for loopholes or circumvention. Following the statement is a brief set of instructions on what to do if you or your employees are confronted with a possible problem or if you want further explanation or clarification.

Each member and employee of USGBC has an individual obligation to comply with USGBC's antitrust compliance policy. Any member or employee who intentionally violates the antitrust compliance policy will be subject to severe disciplinary action, including possible expulsion from USGBC.

Date: __April 30_____, 2005

President/CEO

**ANTITRUST COMPLIANCE POLICY
OF
U.S. GREEN BUILDING COUNCIL**

I. STATEMENT OF ANTITRUST POLICY

Because of the pervasive impact and complexity of the antitrust laws, USGBC has established a formal antitrust compliance program. At all times, an officer of USGBC or member of the Board of Directors will be designated as the USGBC Compliance Officer. In the compliance program, USGBC will undertake the responsibility of providing you with appropriate educational materials and presentations concerning the nature and scope of the antitrust laws. In addition, if you have any questions concerning the antitrust ramifications of any present or future business activity of USGBC, you are authorized and directed to consult with the Compliance Officer or USGBC's legal counsel.

It is, and always has been, the firmly established policy of USGBC to comply with all antitrust laws, state and federal. This means not only simply following the written law - it means conducting all business in conformity with the highest standards of ethics and morality, and avoiding conduct that might give even the appearance of wrongdoing.

The purpose of the antitrust laws is to preserve a competitive economy in which free enterprise can flourish. USGBC's long insistence upon full compliance with all legal requirements in the antitrust area has not been based solely on the desire to stay within the bounds of the law, but also on our conviction that the preservation of a free competitive economy is essential to the welfare of USGBC's members and the country.

The fundamental principle guiding USGBC's activities is that there will be no agreements entered into which restrict each member's freedom to make independent decisions in matters that affect competition. Each member will act in a completely independent manner to set its own prices, establish production levels, develop sales and marketing strategies, choose the markets in which it will operate, and select its customers and suppliers.

This statement is intended to codify USGBC's existing policy and to provide guidelines for compliance with the law. However, this statement is only a general guide and is not intended to provide you with the means to act as your own lawyer. All questions arising about the application of the antitrust laws to conduct of USGBC or its members should be referred to the Compliance Officer. This is not to superimpose the Compliance Officer's business judgment, but rather to give the Compliance Officer the opportunity to appraise the permissibility of a practice in advance and to gain the benefit of legal advice if necessary. It goes without saying that any error can be most costly to the individual member and USGBC.

II. WHY COMPLY WITH THE ANTITRUST LAWS?

There are many reasons why it makes sense for the members of USGBC and their employees to comply with the antitrust laws. There are both positive advantages to compliance as well as serious consequences for violations.

It is the duty of all citizens to abide by the laws of the land. Compliance allows USGBC to maintain and enhance its excellent reputation in the industry. Our reputation has been built over the years by the dedication and efforts of numerous members. The act of a single individual could undo much of what many have worked so long to achieve.

There also are severe penalties for violations of the antitrust laws by individuals and corporations.

Prison Sentences: Prison sentences of up to 10 years per offense may be imposed on any individual who is found guilty of a criminal offense or who pleads "nolo contendere" (no contest to a criminal charge). Numerous corporate officers and employees, in recent years, have been convicted as felons and sentenced to imprisonment. This trend is increasing.

Fine: Fines of up to \$100,000,000 for each criminal offense may be imposed on a corporation and of up to \$1,000,000 on each individual who participates in an offense. Alternatively, corporations may be fined up to twice the gross gain or twice the gross loss resulting from the antitrust violation.

Injunctions and Decrees: In civil proceedings, a decree may be entered against an association, a corporation and their officers and employees which enjoins specified activities. An injunction often prohibits conduct which otherwise would be lawful and may be quite broad in its application to the organization's activities. Therefore, antitrust injunctions can restrain severely the legitimate business activities of an organization.

Treble Damages: Any person or class of persons, directly injured in their business or property by an antitrust violation, may recover in a civil action three times the amount of damages actually suffered.

Legal Fees: In addition to the defendant's own legal expenses, which can be very substantial, the defendant usually will have to reimburse all of the successful plaintiff's legal fees.

Emotional Costs: In the event of a criminal indictment, an individual will be booked, fingerprinted, have mug shots taken, undergo enormous personal upheaval and strain -- especially if tried, convicted and sent to jail.

Thus, participation in an antitrust violation can have disastrous results, both economic and personal, for individuals, corporations and organizations.

III. SPECIFIC PROHIBITED PRACTICES AND DANGER AREAS

A. Relationships With Competitors

Contact with competitors creates the greatest potential danger of antitrust violations. Thus, it is in this area that the greatest care must be taken to avoid the risk, let alone the appearance, of a possible violation.

Any agreement between competitors, whether oral or written, formal or informal, express or implied, regarding (1) prices, pricing policies, sales strategies, discounts, promotions, bids, or the terms or conditions of sale, (2) allocation of customers, sales territories or product markets, (3) boycotts of any vendor or customer, or (4) limitations on the quantity, quality or types of products sold or methods of competing, violates the antitrust laws.

These actions are among those that are referred to as *per se* violations of the Act. Such activities are viewed as illegal in and of themselves without any reference to their reasonableness or effect, if any, upon competition.

Each member and its employees should not only understand the above, but also understand that persons and companies, actually innocent of wrongdoing, may nevertheless be found to have violated the law. It frequently is difficult for the Government to prove by direct evidence that there has been a collusive agreement between competitors. Such an agreement

would not often be put into writing, nor would there often be direct oral evidence of such an agreement. Accordingly, the courts have decided that the existence of an unlawful agreement or understanding can be inferred from highly circumstantial evidence, if the general background is such that an antitrust violation might seem likely.

The courts have held that IT IS NOT NECESSARY TO FIND AN EXPRESS AGREEMENT, either oral or written, in order to find a conspiracy - but that it is sufficient if concerted action was contemplated and the defendants conformed to the arrangement. It has been found that there was a "meeting of the minds" among competitors when business people, in the course of a golf outing, at a reception, or at a trade organization meeting, have suggested to their competitors that "prices are too low," or that "price cutting ought to be stopped," or that "new industry-wide cost increases certainly justify a price increase," and prices were thereafter raised or existing prices were maintained. As a result, it is necessary to avoid not only any action which may violate the antitrust laws, but also any action which may give the appearance of such a violation.

1. Price Fixing

Agreements among competitors to raise, lower or stabilize prices, or to fix the terms and conditions of sale, are the most frequent targets of criminal antitrust prosecution. It is important to remember that not just the actual prices themselves, but any factor influencing price, such as costs, discounts, promotions, warranties, credit and payment terms, may not lawfully be the subject of an agreement among competitors. It is not relevant whether the prices or other terms agreed to were reasonable or unreasonable, high or low, or whether they are in response to unfavorable market conditions. If the prices charged or the terms and conditions offered by

competitors are the result of an agreement, they are *per se* unlawful. As a result, each member's prices must be determined independently and unilaterally, and there should be no communications among the members about any of these matters, whether at USGBC meetings or on any other occasions.

2. Price Signaling

Companies that operate in fairly concentrated markets are susceptible to allegations of price-fixing or restraints of trade because of market conditions that could render collusion feasible. Allegations of tacit conspiracy schemes among competitors to increase prices or control output are often based on little more than the premise that the competitors have similar prices or that the competing firms' prices consistently rise and fall together.

One practice that creates such antitrust risks is the advance public announcement of price changes or output changes. Even though price announcements are generally considered to be pro-competitive because they provide information to customers and suppliers, they often have been the basis for antitrust suits because of the anticompetitive potential to facilitate collusion.

The underlying antitrust concern with public announcements about price or output is that the announcements could serve as a device to achieve concerted action among competitors to stabilize prices or reduce output. In a concentrated market, coordination on price or output is often hampered by uncertainty. A practice that reduces that uncertainty can increase the likelihood of tacit collusion. Thus, the underlying concern about price change or output announcements is that they communicate information to competitors, reducing the uncertainty about the firm's price or output levels, and thereby facilitate collusion. In short, the

announcements could be a form of signaling – a practice that communicates a firm’s prices, future prices or output intentions to its rivals, thereby inviting the rival’s cooperative responses.

Signaling about prices or output raises two possible issues under the antitrust laws. First, collusion that results from price signaling can be attacked as a conspiracy to fix prices which is *per se* illegal. Second, the Government also has attacked price signaling as a separate offense, in and of itself, as a practice that facilitates collusion. In these cases, the federal enforcement agencies have challenged price signaling for its anticompetitive potential, rather than effect. In both situations, however, government enforcement actions usually are followed by private treble-damage class actions on behalf of affected customers.

Price signaling allegations are frequently built on circumstantial evidence of the agreement and facilitating practice. The evidence often includes observations of similar prices or parallel price changes among competitors. The enforcement agencies and courts also look for other evidence of collusion such as an opportunity to collude at trade association meetings.

In order to avoid allegations of illegal price signaling, there should be no communications or discussions between any USGBC members either at USGBC meetings or at any other time about (a) current or future prices, pricing plans or production plans, or (b) announcements of price changes or output changes. Furthermore, each member of USGBC should consult with its own legal counsel before making any price or output announcement. As a general matter, each member should be extremely careful and seek legal advice before engaging in any conduct that could possibly provide evidence to support allegations of collusion.

3. Allocation of Product Markets,
Territories or Customers

Competitors may not lawfully divide or allocate product markets, sales territories or customers among themselves. For example, competitors may not agree to divide or allocate markets geographically or by product. Accordingly, it would be *per se* illegal for competitors to agree that one company would concentrate its efforts on selling high-priced premium widgets while the other would concentrate on selling low-priced widgets. It also would be *per se* illegal to divide customers among competitors in order to eliminate competition for those customers.

4. Bid Rigging

It is *per se* illegal for competitors to enter into an agreement on the submission of bids in response to a request for proposal from a customer. For example, competitors cannot have an agreement or understanding that one company will bid high while the other will bid low. Bid rigging is viewed as another type of agreement not to compete among competitors.

5. Group Boycotts and Concerted
Refusals to Deal

As a general matter, a company is free to choose the parties it will do business with and may unilaterally refuse to deal with anyone. However, it is *per se* unlawful to agree with others not to deal with specified parties. For example, a company may not agree with a competitor not to buy from a vendor, nor may it agree with a competitor not to sell to a specified customer. A company also cannot enter into an agreement with a vendor that the vendor will not sell to or deal with one of its competitors.

6. Limitations on Quantity and Quality of Products or Services

Competitors may not agree to restrict competition between them with regard to the amount, quality or types of products or services that are to be produced or offered. Decisions with respect to these matters must be arrived at independently.

7. Information Exchanges

The practice of exchanging business information with competitors may present substantial antitrust risks, depending on the circumstances. The exchange of information concerning future prices is very dangerous and is likely to be viewed as part of a *per se* illegal price-fixing arrangement. While the exchange of current or past price information in some situations can establish a potentially damaging inference of collusion between competitors, there also are some situations in which the exchange or reporting of such information is permissible. In addition, the exchange of other business information with a competitor, such as current or future cost information, wage rates or credit terms, can be suspect. As a result, any exchanges or reporting of business information through USGBC should be reviewed and cleared in advance by USGBC's Compliance Officer.

B. Trade Organization Activities

While USGBC is a 501(c)(3) organization, it is similar to trade associations and, from an antitrust standpoint, will be commonly referred to as a trade association. Trade organizations are subject to antitrust scrutiny because they involve meetings of competitors, but they frequently engage in a number of legitimate, procompetitive and lawful activities. Trade organizations, such as USGBC, make a meaningful contribution to the business community and to the general

public. For example, they can be effective in representing the interests of the industry at public hearings or before government agencies. They may serve as an educational forum for members and the general public, and they also may play a significant role in improving the quality, variety and availability of products. To achieve these legitimate ends, trade organizations bring together people with common business interests, and their functions frequently require a degree of cooperative effort. However, it is the common interests and cooperation among competitors that give rise to scrutiny under the antitrust laws.

The antitrust laws provide no immunity for trade organization or association activities. A meeting with competitors in connection with organization activities is subject to the same antitrust scrutiny as it would be in a situation unrelated to the trade organization. Thus, illegal business conduct entered into outside of a trade organization remains illegal when conducted through or in connection with a trade organization. Certain corporate decisions, such as the determination of prices, selection of customers, or choice of markets, that are legal when they are the product of a company's exercise of its own business judgment may violate the antitrust laws when they are the result of joint action by two or more competing companies. In addition, such joint action by competitors may be illegal when accomplished through a trade organization.

To ensure that USGBC continues to conduct itself in a lawful manner and in full compliance with the antitrust laws, the following procedural safeguards will be followed by USGBC:

1. Meetings should be no more than reasonably necessary to accomplish the stated goals of USGBC. Each meeting of USGBC or any of its committees must have a valid purpose. Meetings should be regularly scheduled

with advance written notice. Informal or ad hoc meetings should be avoided, and all meetings should be held in appropriate meeting facilities rather than in rooms of individual members.

2. The written agenda or program for each meeting will be submitted to and reviewed by USGBC's Compliance Officer before each meeting of USGBC or any of its committees.

3. Staff of USGBC should attend Board and full committee meetings to the extent it is practicable.

4. An antitrust compliance statement will be read at the beginning of each meeting, or will be included in the written agenda or notices of each meeting.

5. Following each formal meeting of USGBC or any of its committees, all documents (such as minutes) distributed at or after the meeting will be sent to and reviewed by the Compliance Officer for accuracy and completeness.

6. Except for technical or scientific information, approval will be obtained from the Compliance Officer before any documents, statistics or other information relating to market or competitive activities are obtained by USGBC from its members. The Compliance Officer will determine the manner in which the documents, statistics or other information from members are submitted to and maintained by USGBC.

7. Approval will be obtained from the Compliance Officer before any reports or analyses are distributed by USGBC to its members which are based on, compile or summarize information (other than technical or scientific information) obtained from any members.

8. Members attending meetings of USGBC must take special care to avoid discussing prices, production, costs, customers and other competitively sensitive subjects with competitors either at regularly scheduled meetings or at social and informal gatherings.

9. Legal counsel of USGBC will be consulted before USGBC and its members engage in any of the following activities:

- (a) Establishing or revising membership criteria
- (b) Selection, denials or termination of members
- (c) Exchanges of price, cost or other competitively sensitive information, including the collection and dissemination of data
- (d) Standard setting and certification programs
- (e) Joint purchasing arrangements
- (f) Proposals for adoption of legislation or lobbying government agencies
- (g) Exchange of credit information and rating of customers
- (h) Advertising restrictions
- (i) Industry self-regulation and codes of ethics

- (j) Joint research projects

C. Cooperation With Government Agencies

It is USGBC's policy to cooperate with every proper oral or written request by federal, state and other governmental investigators seeking information concerning USGBC's activities, whether for antitrust enforcement or other purposes. At the same time, USGBC is entitled to all the safeguards provided by law for the benefit of persons under investigation, including representation by counsel from the outset. Therefore, if a representative of the Department of Justice, the Federal Trade Commission, the FBI, a state Attorney General's Office, or any representative of any other government agency requests an interview with USGBC members or personnel, or seeks data or copies of documents or access to files regarding USGBC activities, you should tell the investigator that you must secure appropriate instructions and contact the Compliance Officer and legal counsel for guidance.

In the event antitrust litigation is begun or threatened against USGBC, or against a member, any individual having such knowledge should promptly notify the Compliance Officer even in those cases in which USGBC does not appear to be involved.

IV. GUIDELINES

A. Conduct In General

1. **DO** compete vigorously and independently at all times.
2. **DO** conduct your business in an ethical way and always adhere to the principles of honesty and forthrightness in the conduct of your business.
3. **DO** avoid any activities, either individually or collectively through USGBC, which could be characterized as unethical, unfair or deceptive.

4. **DO** contact USGBC's Compliance Officer or legal counsel if you have any questions about the lawfulness of any action you are contemplating.

5. **DON'T** write or say anything that you would not want to disclose to government enforcement agencies or in court.

6. **DO** try to conduct yourself so that you can always be in a position to truthfully and forcefully testify that you have not engaged in any conduct forbidden by the antitrust laws.

B. Conduct Involving Competitors

1. **DO** maintain at all times your Company's independence of judgment and action in pricing, producing, marketing and selling its products, and avoid any kind of agreement, understanding or arrangement, whether formal or informal, with representatives of a competitor regarding any competitive matters. Also, avoid even the appearance of collusion with a competitor regarding these matters.

2. **DO NOT** enter into any agreement, gentlemen's understanding, arrangement or discussion with any competitor concerning the following subjects at any USGBC meetings or on other occasions:

- (a) prices, pricing policies, price changes, or price plans or intentions
- (b) terms or conditions of sale, including credit or payment terms
- (c) discounts provided to customers
- (d) profits, profit margins or costs
- (e) shares of the market

- (f) bids, the intent to bid or the terms of bids
- (g) sales territories or markets
- (h) sales, marketing or promotional activities
- (i) output or production plans
- (j) downtime plans
- (k) selection, classification, rejection or termination of customers or

classes of customers

- (l) exchange of competitive information, or
- (m) any other matter inconsistent with complete freedom of action and

independence of your Company in the conduct of its business.

3. **DO NOT** act in concert with another competitor in your negotiations or dealings with vendors or customers.

4. **DO NOT** complain to a competitor about its business practices.

5. **DO NOT** obtain information about competitors (particularly price information) directly from competitors, but **DO** document the sources utilized to obtain information about competitors (e.g., put the date and source of a competitor's price information on the document itself at the time it is obtained).

6. **DO NOT** engage in any course of conduct or tactics that could be construed as being designed to exclude any competitors, eliminate one or more particular competitors, or control prices in a market.

C. Trade Organization Conduct

1. **DO NOT** engage in any of the following activities through USGBC unless USGBC's legal counsel has been consulted in advance:

- (a) Developing or changing membership standards or criteria
- (b) Selecting or terminating members, including denials of membership
- (c) Exchanges of information, such as price or cost information
- (d) Collection, dissemination, reporting or studies of members' data
- (e) Standard setting or certification programs
- (f) Joint purchasing arrangements
- (g) Lobbying government agencies or for new legislation
- (h) Exchanges of credit information or rating of customers
- (i) Advertising restrictions
- (j) Industry self-regulation and codes of ethics
- (k) Joint research projects

Above all be alert. Watch for sensitive areas. Learn to recognize situations, transactions and activities actually or potentially affected by the antitrust laws. If a question arises as to the propriety of a certain action or practice, **STOP**. Do not attempt to make a legal judgment yourself, but consult with USGBC's Compliance Officer or legal counsel before proceeding further.

V. GENERAL DIRECTIONS

Every member has the individual responsibility to recognize and avoid or prevent situations which may pose possible violations of this policy.

Should you become aware of an actual or potential situation that might violate this policy in any way, or should you be uncertain of your responsibilities in any particular situation, you should promptly bring the matter to the attention of USGBC's Compliance Officer or legal counsel. The goal of this procedure is to ensure compliance with our policy in a manner which will protect the legitimate interests of both the member and USGBC.

Remember: it is important that you clearly understand this policy in its application to your membership in USGBC, and report promptly all situations which conflict, or may conflict, with it.

Date: _____

ANTITRUST COMPLIANCE SIGN-OFF FORM

Return to: _____, USGBC's Compliance Officer

I have received a copy of the Antitrust Compliance Policy for the U.S. Green Building Council's members, have read it and understand its contents.

I will not engage in, nor permit any employees over whom I have supervisory responsibility to engage in, any activities prohibited by USGBC's Antitrust Compliance Policy. I understand that any such action or failure to act can subject me to disciplinary action including possible expulsion from USGBC. In any instances in which I am in doubt, I will promptly consult with USGBC's Compliance Officer. In addition, if I become aware of a potential or actual antitrust problem, I will immediately report the facts to the Compliance Officer.

Signature: _____

Name: _____

Title/Position: _____

Date: _____