

American Trucking Associations ANTITRUST GUIDELINES FOR MEETINGS

To minimize the possibility of antitrust problems, the following guidelines should be followed at all meetings of ATA boards and committees and all ATA-sponsored conventions, trade shows, training seminars, best-practices discussions, conferences, colloquiums, and task force and working group sessions.

Procedures for Meetings

1. Meetings should be held only when there are proper items of substance to be discussed which justify a meeting.
2. In advance of every meeting, a notice of meeting, along with an agenda, should be sent to each member of the group. The agenda should be specific and such broad topics as “marketing practices” should be avoided. An ATA Law Department attorney must review all agendas before they are sent to meeting participants.
3. Participants at the meeting should adhere strictly to the agenda. In general, subjects not included on the agenda should not be considered at the meeting.
4. If a member brings up a subject of doubtful legality for discussion at a meeting, he or she should be told immediately the subject is not a proper one for discussion. The ATA staff representative or any member present who is aware of the legal implications of a discussion of the subject should attempt to halt the discussion. If the subject of prices, costs, or other competitive practices is raised by others at the meeting, participants must disassociate themselves unequivocally from the discussion. If necessary, participants must leave or halt the meeting.
5. Minutes of all meetings should be kept by ATA. An ATA Law Department attorney should review draft meeting minutes before they are distributed to meeting participants. Minutes should summarize accurately the actions taken at meetings, if any. Minutes should not contain comments made by particular meeting participants because of the potential for incompleteness or inaccuracy in attempting to report precise remarks.
6. An ATA attorney or other staff member should attend all meetings. During any discussion between meeting participants that occur outside the formal meeting, the guidelines contained in the next section – “Topics to Avoid at Meetings” – must be followed.
7. Members should not be coerced in any way into taking part in ATA activities.
8. It is essential that members cooperate with ATA counsel, particularly when counsel has ruled adversely about a particular activity or topic of discussion.

Topics to Avoid at Meetings

The following topics are some of the main ones that should not be discussed at meetings attended by ATA members or staff, including meetings or other gatherings sponsored by organizations independent of ATA:

1. Current or future prices of competitors.
2. Matters related to prices, such as discounts, credit terms, profit levels, or volume of production or service.

3. Wage and salary rates, equipment prices, or other actual costs of individual companies, since these costs are an element of price.
4. Dividing up, allocating, or rationalizing markets, bids, geographic areas, types of business, or customers among competitors.
5. Refusals to deal with suppliers, customers, or other competitors. For example, if a group of motor carriers were to agree to boycott a supplier of diesel fuel for the purpose of forcing that supplier to lower its prices, such an agreement could run afoul of the antitrust laws. Critiques of supplier products or customer practices can also raise the risk of being construed as an unlawful group boycott, and should be conducted only after consultation with counsel. Such discussions may be permissible where efficiencies will be achieved through the exchange of ideas and where precautions are taken to avoid the inference of an agreement to deal with suppliers or customers only on certain terms.

“Best-Practices” Discussions

The following guidelines should be applied to any “best-practices” discussion:

1. All discussions of industry practices should involve an attempt to reduce costs or realize some other efficiency goal. Discussions should be limited to what is reasonably necessary to accomplish these legitimate goals.
2. As in other areas of ATA activity, price and other competitively sensitive terms of trade should not be discussed in the “best-practices” context. Specific present or future competitive plans and strategies of individual companies should not be discussed. Nor should specific customer information or specific companies’ costs.
3. In discussing “best-practices,” no agreement should be reached to use a particular practice, to deal with suppliers or customers on particular terms, or to exclude a member or other competitor for using a different practice.
4. To the extent possible, technical personnel of member companies, rather than marketing personnel, should be used to conduct “best-practices” discussions.
5. Prior to a “best-practices” discussion, an agenda should be prepared and reviewed by counsel. Minutes should be kept of all meetings at which “best-practices” are discussed. Should questions arise about the propriety of a “best-practices” discussion, the discussion should be discontinued until counsel can be consulted.

If you have questions, please call the ATA Law Department at (703) 838-1857.

Revised 5/20/11