

## NMHC Antitrust Compliance Policy

NMHC is committed to strict compliance with federal and state antitrust laws. Because trade association activities inherently involve competitors who gather for discussion of industry issues, it is important to be conscious of these laws.

Antitrust laws prohibit competitors from engaging in actions that could result in an unreasonable restraint of trade. There are many features that factor into price; agreements as to factors that can directly impact price also are proscribed. Only some action that could unreasonably restrain trade generally needs to occur for there to be an antitrust violation. Above all else, NMHC members should be free to make business decisions based on the dictates of the market – not the dictates of NMHC.

Some activities by competitors are deemed so pernicious and harmful they are considered *per se* violations – it does not matter whether the activities *actually* have a harmful effect on competition – the effect is presumed. These generally include price fixing, allocation of customers, markets or territories, bid-rigging, and some forms of boycotts.

Other actions, such as industry standard setting, certification and accreditation programs, codes of ethics, and association membership restrictions, generally are evaluated under a rule of reason to balance pro-competitive and anti-competitive factors. These areas also should be approached with caution and legal guidance.

NMHC members should avoid discussing certain subjects during NMHC membership, Board of Directors, committee, and other meetings; through telephone calls, emails and online forums; in informal contacts with other industry members; and should adhere to the following guidelines:

- Do not discuss current or future prices, fees, discounting, and other terms and conditions that can impact (e.g., raise, lower or stabilize) prices such as discounts, costs, salaries, warranties or profit margins. NMHC members cannot come to understandings, make agreements or consensus on any activities that in any way tend to impact prices or fees. Discussion of what constitutes a reasonable, fair or appropriate price or fee for any service or product is also prohibited. A price-fixing violation may be inferred from price-related discussions followed by parallel decisions on pricing by association members – even in the absence of an oral or written agreement.
- Do not exchange data concerning fees, prices, inventory, sales or rental transactions, bids, costs, salaries, customer credit, or other business practices unless the exchange is made pursuant to a well-considered plan approved by NMHC’s legal counsel. Historical pricing and related activities may be discussed when that information is

aggregated, general in nature and does not include data on current prices or fees. Any discussion of current or future prices, fees, discounting and other terms and conditions of sale or rent – which may lead to an agreement or consensus on prices or fees to be charged – is strictly prohibited.

- Do not agree with competitors as to uniform terms of sale, warranties or contract provisions.
- Do not discuss actions that are intended to discourage competition or innovation among NMHC members.
- Do not agree with competitors to divide up or allocate customers, markets or territories.
- Do not agree with competitors not to deal with certain suppliers or others.
- Do not try to prevent a supplier from selling to your competitor(s).
- Do not discuss your customers with your competitors.
- Do not resolve problems particular to a single NMHC member or a small, select group of members with the intent of diminishing competition.
- Do not coerce NMHC members to implement programs or policies.
- Do have meeting agendas circulated in advance and subsequent meeting summaries that reflect the actions taken at a meeting.
- Do leave any meeting or gathering (formal or informal) where improper subjects are being discussed, and tell attendees why you are leaving.
- Do ensure that only NMHC staff sends written correspondence on behalf of NMHC and that NMHC officers, directors, committee members, or other members do not hold themselves out as speaking or acting with the authority of NMHC when they do not have such authority.

The consequences for violating the antitrust laws can be severe and they can be enforced against associations, association members, and the association's employees by both government agencies and private parties such as competitors and consumers.

Questions may be directed to NMHC General Counsel Betsy Feigin Befus.

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