




TO: APA Management and Marketing Advisory Committee Meeting Attendees
FROM: John S Conniff, APA General Counsel 
DATE: February 7, 2023
SUBJECT: Antitrust Compliance and Communication Reminders

The APA comprises members who compete against one another in the marketplace. The APA must carefully monitor communications and meetings among competitors to avoid conduct that could violate state and federal laws designed to promote fair competition. Because the APA tests and certifies products sold in the marketplace, members should be particularly careful to avoid communications and behavior that suggest that APA services have been provided or withheld in an unfair manner. To prevent unfair practices, longstanding APA rules and guidelines govern APA activities and member participation within the APA. Members should periodically review these guidelines to ensure compliance and the continued success of APA.

Meetings, conferences and conventions can become the petri dishes for anti-competitive behavior. Members should be sensitive not just to their actual behavior and communications but also to appearances and inferences of their behavior and conversations. Not every problem can be avoided; but most can be avoided with a little attention to detail.

Here are some subjects to avoid (the list is not exhaustive of the types of risky subjects) when you find yourself in the same room with competitors:

- **Don't** discuss your pricing, timing of price changes, product distribution practices, or other terms and conditions of doing business with your company;
- **Don't** discuss restrictions relating to your markets or your market plans;
- **Don't** discuss actions that would directly or indirectly affect company market shares;
- **Don't** discuss output, quotas, sales and related limits;
- **Don't** discuss customers, competitors and suppliers in a way suggestive of a boycott or limitation of their access to markets; and
- **Don't** seek or share proprietary information from competitors such as costs, profitability, strategy or product development known only to the company.

In addition, the APA, as a separate entity with its own legal obligations independent of its members, must maintain that separate identity through disciplined communication, adherence to APA governing rules and good risk management.

Members may find themselves struggling to respond to someone else's questions about APA and its operations. Here are some guidelines that you may find useful in difficult situations:

- Only those individuals authorized by APA to communicate on behalf of APA should raise or respond to issues concerning the APA. When in doubt, simply observe that "I am not authorized to discuss these matters on behalf of the APA." Then refer the individual to the Communications Director.
- Avoid using the "no comment" response to difficult questions; better to observe that you do not discuss such matters. You are not required to run away from people; rather, you should avoid conversations better left to authorized APA representatives or within your member company.



- You are never “off the record” or in a private conversation or limiting social media to just “friends.” Assume that every communication you make that might be useful to someone with less than friendly motives will be found and published.
- You have no obligation to answer a question unless legally compelled and “I don’t know” constitutes an answer.
- You are not required to change your answer just because a person keeps asking the same question.
- There is nothing wrong with saying nothing or with changing the subject.