

# BCxA ANTITRUST COMPLIANCE POLICY

The purpose of the antitrust laws is to preserve the competitive process. It is the policy of the Building Commissioning Association (BCxA) to strictly comply with the letter and the spirit of the federal and state antitrust laws. This policy is not subject to compromise by anyone acting for BCxA. Any conduct that violates the federal or state antitrust laws is detrimental to the best interests of BCxA.

This document briefly explains antitrust rules and guidelines that apply to BCxA, as an association whose purpose is to further the legitimate interests of the building commissioning industry. This document will not make you an expert on the antitrust laws, but is intended to identify antitrust danger areas that you should avoid or about which you should ask BCxA leadership or your private antitrust counsel for guidance. It also identifies prohibited practices and activities as members of BCxA. Failure to be informed about the antitrust laws in the areas in which you have responsibility may subject you to criminal prosecution under those laws, as well as threaten the growth, good will, and financial condition of BCxA.

Trade associations like BCxA involve an opportunity for contact among competitors or entities with common business interests, which potentially entails an increased risk of violating antitrust laws. There is no immunity for trade association activities under the antitrust laws, and BCxA activities are subject to the same scrutiny that they would be in a situation unrelated to association activities. Certain corporate decisions -- such as determination of prices, selection of customers, or choice of markets – may be legal when they result simply from an individual company exercising its business decision, but can violate the antitrust laws if those decisions are the result of joint action by two or more competing companies, even when accomplished under BCxA’s auspices.

## ANTITRUST LAWS AND PENALTIES

## 1. The Antitrust Laws

There are four principle federal antitrust laws that may apply to BCxA. In addition, most states have enacted antitrust laws that parallel the federal antitrust laws and provide their own separate remedies in the event of a violation.

**Sherman Act:**

The Sherman Act prohibits agreements, understandings, or joint actions between two (or more) companies that unreasonably restrain trade. The Act also prohibits monopolization or attempts and conspiracies to monopolize.

**Clayton Act:**

The Clayton Act is the primary merger statute that prohibits mergers or acquisitions of stock or assets if their effect “*may be* substantially to lessen competition, or to tend to create a monopoly.” The Act also prohibits tying arrangements, certain types of exclusive dealing arrangements, and an individual from serving as a director on competing corporations under certain conditions.

**Robinson-Patman Act:**

The Robinson-Patman Act prohibits a seller from discriminating in price (selling at different prices) between different buyers when such discrimination adversely affects competition and is not justified by one of the Act’s affirmative defenses.

**Federal Trade Commission Act:**

The Federal Trade Commission Act prohibits all “[u]nfair methods of competition.” This provision has been interpreted by the courts to prohibit at least any conduct or transaction that also violates the Sherman Act or Clayton Act.

## 2. Penalties

The penalties for violating federal or state antitrust laws are severe and can be imposed on BCxA and on individual employees:

**Criminal Penalties:**

Restraints of trade in violation of the Sherman Act are FELONIES. Criminal penalties may be imposed up to $100 million for a corporation and $1 million for an individual, along with up to ten years in prison. The maximum fine may be increased to twice the amount conspirators gained from the illegal act, or twice the money lost by the victims of the crime, if either of those amounts is over $100 million.

**Civil Penalties:**

An antitrust violation can prompt lawsuits by private individuals and companies claiming injury from the alleged violation. Private parties can sue under federal and state law. In most private antitrust lawsuits in the United States, plaintiffs can be awarded three times the amount of the actual damages, plus attorneys’ fees and the costs of litigation.

**Other Penalties:**

Violations of the antitrust laws can lead to serious harm to BCxA’s reputation and our ability to successfully achieve the legitimate goals of the association. Even the accusation of antitrust violations may cause a loss of reputation and standing in the community. Accordingly, we must be extremely careful to avoid any appearance or accusation of violating the antitrust laws.

# SPECIFIC PRACTICES

The following describes the manner in which BCxA conducts its business in order to insure that its activities do not unreasonably restrain competition, including a non-exclusive list of the types of prohibited agreements and conduct under the antitrust laws.

1. Organization and Membership: Membership decisions must be based on qualifications that are uniform, non-discriminatory, and serve a legitimate purpose. The requirements for membership should be as objective as possible, and are set forth clearly in the BCxA bylaws, charter, or policy documents. Decisions shall be made in a non-arbitrary manner, and generally shall not exclude industry participants with a legitimate business interest in the association who meet the BCxA requirements for membership.
2. Voting Rights and Privileges: Voting rights of BCxA members shall be equal, without favoring any group with preferred voting rights or privileges. Positions as directors and officers are open to all members, and BCxA strives to have leadership who is representative of the BCxA membership.
3. Conduct of Meetings: BCxA meetings, either of the association or any of its committees or chapters, shall be regularly scheduled with advance written notice and proposed agenda sent to all members. Informal, unscheduled meetings shall be avoided. Each meeting of BCxA or any of its subparts must have a valid purpose related to accomplishing the stated goals of BCxA.
4. Conduct of Members: BCxA does not sanction any conduct or agreement by any of its members (regardless of the informality or non-binding nature of that agreement) that is intended to or may result in price-fixing, allocation of markets, customers, or products, or a boycott of any competitor, customer or supplier. Discussions at BCxA meetings or activities, as well as written communications shall be directly related to the lawful aims of BCxA, and should not relate, directly or indirectly, to any of the prohibited conduct described below.

## Price Fixing is Prohibited

Probably the clearest and most widely publicized antitrust offense is price fixing among competitors. Agreements or understandings, whether formal or informal, between two or more competitors concerning selling or purchase prices are *per se* (or “always”) illegal,regardless of the competitive effect or alleged justifications. This would include agreements among competitors to set prices, to establish maximum or minimum prices, to stabilize prices, to establish a common pricing system, or in any way affect the competitive pricing in an industry. The prohibition against price fixing not only applies to the price itself, but also to all terms and conditions of sale.

In the context of BCxA activities, any discussion of price, terms or conditions of sale, or pricing strategies, with competitors – including other BCxA members – should be avoided, and such information may only be supplied as part of an approved statistical compilation by BCxA or an independent body on behalf of BCxA.

## Market or Customer Allocation is Prohibited

Another offense in the United States that is per se illegal is an agreement among competitors that they will not compete as to a certain business. This includes understanding among competitors to allocate certain geographic territories, specific customers, or certain lines of product among the competitors. As with price fixing agreements, courts in the United States will not accept any defense or justification for dividing markets.

BCxA members may not at any time induce, support, or engage in the practice of disclosing a bid or proposal to any other competitive bidder, nor should there be discussions with competitors regarding intentions to bid or refrain from bidding for a project or particular business.

## Group Boycotts are Prohibited

Group boycotts, or collective refusals to deal, are illegal in the United States and by extension other countries where BCxA has representation. In general, there are two types of group boycotts. In the first, competitors agree not to do business with a particular customer or supplier. In the second, a supplier agrees, directly or indirectly, with its customers not to sell to any other potential customer who desires to purchase the product.

BCxA members may not enter into agreements or understandings, formal or informal, to avoid selling to, purchasing from, or doing business with another firm. Such boycotts violate the antitrust laws. It is not illegal, however, for any individual firm to unilaterally refuse to deal with any present or potential customers or suppliers, unless that refusal is based on an anticompetitive purpose.

1. Statistical Activities: In the event that BCxA decides there is a legitimate need to gather industry data (e.g., for tracing supply and demand cycles on a national or international basis, or related to the public relations function of BCxA), BCxA will employ the services of an independent, outside organization to assemble and disseminate the data in question. BCxA will make every effort to ensure that data will be submitted anonymously and that competitive data will not be disclosed in a manner that allows identification of specific companies or individuals.
2. Antitrust Policy Compliance: The Executive Director will distribute the policy to all International Board Members, Committee Chairs, Chapters and Staff in January of each year for review and signature. These signatures should be collected no later than February 28 of that year. If any member refuses to sign the document, it will be considered grounds for their removal from their position.
3. All suspected conduct in violation of this policy should be communicated to counsel for BCxA if applicable, as well as a member(s) of BCxA Leadership (i.e., International and/or Chapter Board members, International and Chapter Committee Members).

# CONCLUSION

This document is part of BCxA’s continuing effort to help assure compliance with the antitrust laws. It is BCxA’s policy to fully comply with all federal and state antitrust laws. Anyone affiliated with BCxA in any way that creates the appearance or perception that antitrust violations are taking place is putting the association at great risk for unnecessary liability.

I hereby acknowledge that I have reviewed the BCxA Antitrust Compliance Policy, and I understand and agree to abide by its policies and guidelines.

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Printed Name