FIBRE BOX ASSOCIATION®

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FBA ANTITRUST POLICY AND GUIDELINES

The policy of the Fibre Box Association ("FBA") is to adhere to all applicable antitrust and competition laws, and to avoid, and to take all appropriate steps to prevent, communications between competitors that are unlawful or create the impression of being unlawful. To that end, FBA has created this "Antitrust Policy and Guidelines" (the "Guidelines") to help ensure the compliance of the Association and its member companies with the law. Please note that these Guidelines in no way replace antitrust compliance programs at FBA member companies.

These Guidelines provide a statement of the FBA's antitrust compliance policies, a description of FBA's antitrust compliance safeguards, and guidance regarding proper conduct at meetings and in communications involving the FBA and its members. Do not hesitate to contact FBA's antitrust counsel with any questions regarding these Guidelines or any potential antitrust issue:

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I. FBA's Antitrust Compliance Policies (*What do these guidelines cover?)*

The FBA is committed to free competition and free markets. One of its core functions is to create an environment in which industry members can come together for the common good of the industry without violating the antitrust laws. Therefore, as a prerequisite to participation in FBA activities, members should have a basic understanding of the antitrust laws, and what conduct might present concern.

A. Prohibited Conduct (*What can't I do?)*

Of all the legal actions that can be pursued under the antitrust laws by any government or private entity, many involve unlawful agreements among competitors not to compete, or to restrict competition in some other way, that are not related to a legitimate business arrangement that may benefit consumers and competition. Such agreements are strictly prohibited by these Guidelines and must be avoided.

The primary United States federal antitrust laws include the Sherman Act, the Clayton Act, the Robinson-Patman Act, and the Federal Trade Commission Act. Among other things, these laws prohibit agreements between competitors that have the aim or effect of restraining competition, monopolization, and discriminatory pricing, as well as "unfair methods of competition" and "unfair or deceptive acts or practices." Provisions of these laws can be invoked by the United States Department of Justice to pursue criminal prosecutions or civil enforcement actions, and by the

Federal Trade Commission through civil enforcement actions before an administrative law judge, without a jury. Certain provisions can also be used by private plaintiffs in civil lawsuits to pursue trade associations or trade association members that engage in the conduct described below. In addition to these federal laws, most states and many foreign countries have their own antitrust and competition laws, as well as their own mechanisms of enforcement, including state attorneys general and foreign competition enforcement agencies, as well as private plaintiffs. These state and foreign laws can apply in contexts that the federal antitrust laws do not address, meaning legal advice is essential to ensure compliance.

These legal actions and prosecutions usually allege a conspiracy or "horizontal agreement" among competitors, often alleged to have been hatched in conjunction with trade association meetings or social functions, and can carry enormous legal exposure and stiff civil and criminal penalties (including individual imprisonment), damages, and injunctions. The treble damages provision of the antitrust laws entitles plaintiffs to recover three times the amount of damages suffered. Injunctions restricting the future conduct of defendant entities can last for many years and cover areas of business beyond those involved in the lawsuit itself. Legal fees to defend such lawsuits can run into the millions of dollars, even if the lawsuit is resolved prior to trial. Compliance with these Guidelines is essential to avoid these harsh consequences.

It's also important to note that some conduct is considered "*per se*" illegal under the antitrust laws, without regard to the circumstances or the justification offered, and irrespective of the actual effect of the specific conduct on competition. Examples of this conduct include, but are not limited to, price fixing, bid rigging, and customer allocation, described below.

Antitrust violations can be based on circumstantial evidence without any evidence of an explicit agreement. These Guidelines therefore prohibit not only formal written agreements, but oral agreements, "gentlemen's agreements," tacit understandings, "off the record" conversations, a "knowing wink," and the like, from which an unlawful agreement or understanding will be inferred.

1. Don't Discuss Prices or Pricing

Agreements between two or more competitors on what price, or price range, they are going to charge for a product or service concerning prices, known as "price fixing," are absolutely prohibited by the antitrust laws as *per se* violations.

These Guidelines therefore prohibit direct or indirect communication between any representatives of member companies concerning past, present or future prices. The word "price" as used here is broadly defined to include sales prices, pricing policies, bids, discounts, allowances, markups, warehousing charges, costs of raw materials, credit terms, terms and conditions of sale, transportation costs, manufacturing improvements, *etc*. All are factors bearing directly on the final "price," and under these Guidelines, they may not be discussed. For purposes of these Guidelines, "discuss" includes both a conversation between more than one member and the expression of the views or experience of any member to other members.

For a number of years, the FBA has published an overall price trend, or index, on a quarterly basis. The statistical trend is based on the total square footage of corrugated and solid fibre shipped divided into the total dollars received. The statistics do not provide a "price" as such, but only a trend. The FBA takes steps to ensure that the index is not susceptible to being used for any illegal purpose, *i.e.*, price fixing.

Please note that most evidence in price fixing cases is circumstantial and liability can be based on inferring a scheme from a few isolated facts. For example, if price movements routinely follow meetings between competitors' representatives, that can be cited as circumstantial evidence of an agreement to fix prices. It is thus critical to conduct yourself to avoid even the appearance of impropriety.

Q: During an FBA meeting, an individual stands up and, in the course of making an unrelated comment, mentions that his company intends to raise its prices 2% the following week. No one else in the room reacts or speaks up, and there is no further discussion of pricing. Can you pretend this never happened?

A: No. Even that brief mention of pricing, taken out of context, could lead to an inference that unlawful agreement has occurred. Upon reference to company-specific pricing information, you should have stood up, left the meeting, and informed antitrust counsel of exactly what happened, and the actions you took.

2. Don't Discuss Capacity or Production Levels

Certain topics are so closely linked with pricing that discussion between competitors regarding them can create an inference of potential unlawful agreement. These topics include capacity or production levels, regarding which these Guidelines prohibit direct or indirect communication between any representatives of member companies.

Q: Following an FBA Committee meeting you attended, you take a look at the meeting minutes and notice that one section implies that the Committee members discussed the industry taking more "down time" over the holidays. You know that conversation did not occur, and understand that the minutes are actually intended to reference a permissible conversation on a different topic that did happen during the meeting. Should you speak up?

A: Yes. Though FBA staff and FBA's antitrust counsel are careful to ensure that all communication accurately reflects what transpired at meetings in a way that cannot be misinterpreted, it is both appreciated and expected that each FBA meeting participant ensures compliance with this policy. If you see or hear something that seems off, promptly raise it with FBA's antitrust counsel.

3. Don't Discuss Allocation of Territories or Customers

Any attempt on the part of competitors to control, limit or allocate the customers to whom they will sell, or the territories in which sales are made, is likely to be found to be illegal *per se*. As a result, competitors should not engage in any discussions that might be construed as facilitating market allocation.

Q: During cocktails following an FBA meeting, a contact at a competing company suggests to you that it would be much more efficient for the industry if certain companies focused their sales in certain regions to address increased shipping costs and transportation challenges. What should you do?

A: Immediately end the conversation, and report the fact that you did so to the appropriate contact in your company's legal department and to FBA's antitrust counsel. No matter the justification offered, this is a violation of these Guidelines.

4. Don't Discuss Bids

These Guidelines prohibit "bid-rigging," meaning any agreement among competitors on the content of their bids, that one party will not submit a bid, that one party will submit a bid that is designed to lose, or anything else that reduces competition in the bid process, such as excluding other competitive bidders, as well as communication regarding the identity of the persons who are or who are not bidding, prices or terms of bids, or decisions to bid on selected items.

B. Conduct Requiring Caution (*Where Should I Be Careful?*)

Some areas of FBA activity must be conducted with extra caution, as while they are generally beneficial to the industry and to consumers, they can impact competition. These activities are judged by courts under the so-called "rule of reason," analyzing in light of the relevant circumstances whether their purpose or effect unreasonably restrains competition. The following are examples of association activity that could create antitrust exposure if they are not properly designed, supervised, and monitored.

1. Follow Safeguards for Industry-Wide Statistics

FBA gathers, compiles and disseminates statistics related to the industry's performance. To prepare these statistics, FBA obtains shipment and aggregate sales data by plant, and removes any identifying information, keeping the original data secure and confidential. FBA members then receive reports of aggregate shipments by areas and regions of the country and an index of the price trend by broad geographical areas each quarter. Consistent with guidance from regulatory agencies, the FBA's statistics program:

- does not allow for the exchange of customer-specific information;
- does not estimate or project future price information;
- uses historical data only;
- ensures that data supplied by members is kept confidential from other members and from third-parties (except where appropriate for FBA business and where the third-party is subject to a confidentiality agreement), and is destroyed as soon as is practical after the data is aggregated and the reports created and in no event later than one year; and
- publishes aggregated data, presented in a way that prevents the identification of any particular member's data.

FBA's antitrust counsel conducts periodic reviews of FBA's statistical programs to ensure continued compliance with applicable law and best practices.

Consistent with these Guidelines, member companies must not discuss any statistics in any more individually identifiable form than the data published by FBA.

Q: After sending the relevant data to FBA, a representative of a competing member company emails both you and a third member's employee, and suggests that the three of you also, separately remove identifying information from your companies' data and share it amongst yourselves. Can you do so?

A: No. Data sharing in that situation would lack many of the critical safeguards used by the FBA in its statistical programs, and would create significant risk. You should reject any such invitation and report it to your company's legal counsel and FBA's antitrust counsel.

2. Participate in Appropriate Industry Advocacy

As a trade association, one of FBA's important roles is to make its members' views known to governmental bodies such as regulatory agencies and state and federal legislatures. Advocacy to the government on behalf of the industry as a whole is activity protected from antitrust liability. But as certain types of lobbying activities are excepted from this doctrine, such advocacy still should be conducted with caution and in coordination with legal counsel.

3. Observe Fair and Representative Procedures in Standard-Setting

From time to time, FBA participates in developing industry standards in diverse areas ranging from voluntary standards for repulping and recycling of wax-coated corrugated containers to international box standards and many more. FBA's industry-wide input is often made along with input by individual companies in the industry, both member and non-member. For any collective standard-setting discussion or comment, FBA ensures that all pertinent points of view are considered and represented, including non-member industry representatives, governmental representatives and others who could be affected by the changes.

C. Permissible Conduct (*What Can I Do?*)

Certain FBA activities present little antitrust concern, including monitoring and disseminating information about government regulations and recycling issues; sponsoring awards for excellent safety performances; studying environmental, technical, health and safety problems which may arise in the industry; and monitoring competitive packaging which might threaten the industry's markets. These Guidelines permit and encourage communication and discussion concerning these subjects.

Q: The FBA has organized a committee and is inviting a number of representatives from member companies to discuss ways to increase the recycling and recovery of corrugated fiber. Is it ok to discuss and try to reach agreement on this topic?

A: Yes. Discussion and agreement on best practices in this and many other pro-competitive and beneficial areas is among the many benefits of participation in the FBA. When meetings like this take place and these Guidelines are observed, both the industry and consumers benefit.

II. FBA's Antitrust Compliance Safeguards (*How Does FBA Protect Its Members and Itself?*)

FBA staff designs all FBA policies, events and communications to achieve the goals of the Association while avoiding any conduct that could be considered unlawful under the antitrust laws. For example, because exclusion of an entity from a trade association by virtue of its membership criteria can give rise to antitrust liability, FBA's membership criteria are carefully crafted to be non-discriminatory, objective, and in furtherance of the pro-competitive purposes of the FBA. Any proposed revisions to the FBA membership criteria are reviewed by FBA's antitrust counsel.

FBA staff receives annual advanced antitrust training from FBA's antitrust counsel, to ensure all of these activities continue to be conducted in accordance with these Guidelines and with current antitrust law principles.

FBA also maintains specific safeguards designed to protect its members in the course of its activities. The FBA strictly enforces these protocols to ensure compliance with the antitrust laws to protect FBA and its members.

- All official FBA meetings have agendas distributed in advance, detailing the topics to be covered. These agendas are approved in advance by FBA's antitrust counsel, and are designed to keep all discussions on track and within the bounds of these Guidelines and the antitrust laws.

- All presentation materials are reviewed and approved beforehand by FBA's antitrust counsel, whether given by FBA members or outside presenters.

- FBA includes written antitrust guidelines among the materials provided to presenters and attendees in advance of its events.

- FBA staff and antitrust counsel have developed antitrust reminders, including one-page summaries and flip-cards that are distributed to attendees at FBA meetings as appropriate.

- All official FBA meetings are memorialized in minutes that are reviewed by FBA's antitrust counsel before distribution. These minutes provide a record of who attended FBA meetings and what was discussed.

- Attendees at FBA Committee meetings annually complete a certification of compliance with these Guidelines.

- Communications from the FBA to its members are reviewed by FBA's antitrust counsel. Emails, newsletters, and web site content are approved by FBA staff and antitrust counsel where the content merits review.

- Antitrust counsel is present at official FBA meetings and social events, as determined necessary by FBA's antitrust counsel. At the beginning of these meetings, antitrust counsel provides reminders regarding antitrust law and these Guidelines.

III. FBA Members' Role to Help Ensure Antitrust Compliance (*How Do FBA Members Protect FBA and the Industry?*)

As set forth above, FBA policy is to avoid all communications between competitors that are unlawful or could create the impression of being unlawful. FBA member companies should assume that there is no "grey area" with respect to the antitrust laws, and consider it part of membership to be on the alert for contact between competitors that is or could be perceived as running afoul of the antitrust laws. Conduct that falls into any one of the following categories should be considered unlawful and avoided at all costs:

- Setting or discussing past, present, or future prices with competitors
- Dividing territorial markets between competitors
- Dividing customers between competitors
- Agreeing on levels of production with competitors
- Agreeing to exclude competitors from the market
- Distorting the bidding process
- Boycotting customers or vendors
- Exchanging any confidential, competitively sensitive information

If an FBA member observes any potentially unlawful interactions, the member should voice his or her objection and alert FBA's outside antitrust counsel. In addition, a member who comes across an FBA document that reflects prohibited activity should immediately bring it to the attention of FBA's antitrust counsel. Remember that even individuals who do not actively participate in an unlawful discussion, or who do not formally agree to act in a certain way, risk incurring liability for themselves, their company, and FBA merely by virtue of their awareness of any potentially unlawful communication.

IV. Contact FBA's Antitrust Counsel with Any Questions (*Call Us Any Time*)

These Guidelines supplement, but do not replace, the antitrust compliance programs in place at each FBA member company. Every member should identify an appropriate contact within their legal department to whom questions may be directed in the event that antitrust concerns should arise, or from whom to seek training and guidance, but members also should not hesitate to contact FBA's outside antitrust counsel. In every instance, the wisest course of action if you are uncertain regarding the lawfulness of any conduct or communication by FBA members is to contact counsel.

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