## Appendix A. Antitrust Timeline

<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td>1910</td>
<td>The Sherman Antitrust Act was passed</td>
<td>The first federal attempt to regulate business practices to prevent unfair competition.</td>
</tr>
<tr>
<td>1915</td>
<td>The federal courts began to issue injunctions to prevent anti-competitive practices</td>
<td>Courts began using the remedy of injunctions to halt antitrust violations.</td>
</tr>
<tr>
<td>1923</td>
<td>The U.S. Supreme Court upheld the Sherman Act</td>
<td>The Supreme Court confirmed the validity of the Sherman Act as a means to prevent monopolistic practices.</td>
</tr>
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<td>1925</td>
<td>The Federal Trade Commission (FTC) was established</td>
<td>Created to enforce antitrust laws and regulate unfair trade practices.</td>
</tr>
<tr>
<td>1930s</td>
<td>The Robinson-Patman Act was passed</td>
<td>To prevent discrimination in pricing and eliminate predatory practices.</td>
</tr>
<tr>
<td>1940s</td>
<td>The Federal Trade Commission began to investigate cartels and monopolies</td>
<td>Large corporations were scrutinized for price-fixing practices.</td>
</tr>
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<td>1950s</td>
<td>The Federal Trade Commission began to use the Sherman Act to regulate the behavior of cartels and monopolies</td>
<td>The Sherman Act was used to break up cartels and encourage fair trade practices.</td>
</tr>
<tr>
<td>1960s</td>
<td>The Federal Trade Commission began to investigate the advertising industry for deceptive practices</td>
<td>Advertising practices were monitored for compliance with antitrust laws.</td>
</tr>
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<td>1970s</td>
<td>The Federal Trade Commission began to investigate the airline industry for price-fixing and collusion</td>
<td>The airline industry was investigated for illegal price-fixing and market manipulation.</td>
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<tr>
<td>1980s</td>
<td>The Federal Trade Commission began to investigate the pharmaceutical industry for monopolistic practices</td>
<td>The pharmaceutical industry was scrutinized for price-fixing and exclusionary practices.</td>
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<td>The telecommunications industry was investigated for market dominance and exclusionary practices.</td>
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### Table Notes:
- **1910**: The first federal attempt to regulate business practices to prevent unfair competition.
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Appendix B. Case Annotations

For more comprehensive summaries and additional case summaries, please visit the research database accompanying this report at: https://drive.google.com/drive/u/1/folders/0B-Sc0KR7f1Flfpub09BUmtoNWJzTzhrbGV0YlFJSVJzdkE3RmNWNmFiSm5MVV9tOFFFFT2s

In chronological order:

**United States v E.C. Knight Co (1895), 156 US 1**

The United States claimed that, in order for the American Sugar Refining Company to obtain complete control of the price of sugar in the United States, that the company, and John E. Searles, Jr., acting for it, entered into an unlawful and fraudulent scheme to purchase the stock, machinery, and real estate of the other four corporations defendant for the purpose of restraining interstate trade. It was found that on or about March 4, 1892, Searles entered into contracts with the defendant Knight Company, the Spreckels Company, the Franklin Company and with the Delaware Sugar House [p3]. The argument is that the power to control the manufacturing of refined sugar is a monopoly over a necessary of life, to the enjoyment of which by a large part of the population of the United States interstate commerce is indispensable, and that, therefore, the general government, in the exercise of the power to regulate commerce, may repress such monopoly directly, and set aside the instruments which have created it [p12]. However, the courts determined that refining, as a manufacturing process does not belong to the concept of commerce therefore the jurisdiction of such processes lie with the state, effectively disarming the extent of the Sherman Antitrust Act.

**Swift & Co. v United States (1905), 196 US 375**

In an effort to restrain competition amongst themselves, the defendants engaged in purchase agreements that effectively regulated the purchasing of livestock amongst a selection of competitors that controlled six tenths of the whole trade and commerce of fresh meat. The competitors agreed to refrain from bidding against each other and, by this means, compelling the owners of such stock to sell at less prices that they would receive if the bidding really was competitive [p391]. The courts ruled that the US government has the authority to regulate monopolies if it has a direct effect on commerce and competition, overturning the previous case that suggested that certain monopolies were determined at the state level, thus making such actions per se illegal.

**Parker v. Brown (1943), 317 US 341**

The case was brought to the Supreme Court by raisin growers challenging the validity of the proration program known as the California Agricultural Prorate Act by claiming it as violation of commerce [p.348]. The California Agricultural Prorate Act was a program created in 1940 by the state to authorize marketing programs for agricultural commodities. Its purpose was to ‘conserve the agricultural wealth of the State’ and ‘prevent economic waste in the marketing of crops’ [p346]. Because the Proration act uses terms like ‘adversely affecting,’ ‘economic stability,’ and ‘agricultural price,’ it was determined that the intent was not to raise prices beyond the parity price described by the Federal Agricultural Marketing Agreement Act of 1937 or the Agricultural Adjustment Act, despite the results, [p355, p358] and, therefore, although had a significant effect on interstate commerce, the courts concluded that the proration program is a local concern that does not interfere with national control of commerce in a manner that is forbidden by the Constitution [p368]. This ruling lead to the creation of the Parker Immunity Doctrine or “state action immunity”. The Parker Immunity Doctrine is an Act that protects the actions of the state governments from federal antitrust laws. The actions of state governments are exempt from the Sherman Antitrust Act if the state acted as a sovereign and not in conspiracy to restrain trade or establish a monopoly because
there is an assumption that the actions of the State are for the purposes of promoting what is best for trade [p352]. A state cannot give immunity to those who violate the Sherman Antitrust Act by authorizing them to violate it or by declaring that an action is lawful [p.351]. A state can only operate within its own sphere of authority rather than in conflict with another [p.354].

**United States v Oregon State Medical Society (1952), 343 US 326**

During this period of time, doctors felt that the doctor-patient relationship was eroding by changes in the profession. “Contract practice” is a practice that has been ethically objected by the medical profession because it involves insurance companies and corporations in the quality of medical care. Because the doctor is paid by the corporation or insurance company, the patient loses authority providing a potential conflict of interests [p328]. In the past, the profession of medicine - championed by a select number of medical professionals - fought to end ‘contract practices’ but in Oregon, given the demand for these practices, the doctors reversed their strategies and developed nonprofit organizations collectively to administer prepaid medical services [p329, 330]. The United States believed that the Oregon State Medical Society through the Oregon Physicians’ Service is involved in facilitating tying agreements and anticompetitive activities between corporations and agreed upon hospitals and physicians through “contract practice” or prepaid medical care based on the evidence that fees are typically standardized and developed cooperatively with intent on monopolizing the prepaid medical care business [p328]. Prior to this event, it is believed that the medical practitioners, although perhaps behaving in violation to the antitrust law, were attempting to address the problem “in good faith and genuineness” [p334] for the benefit of their profession and since no refusal to deal with other private health associations had been proved, no antitrust violation was found [p335]. Therefore, it was determined that “in some instances, the State may decide that ‘forms of competition usual in the business world may be demoralizing to the ethical standards of a profession” [p336] and allow agreements between professionals when they have pro-competitive benefits. In this case, it introduced other corporations run by doctors to compete in the insurance plan business.

**Eastern Railroad Presidents Conference v Noerr Motor Freight, Inc. (1961), 365 US 127**

In early American history, railroad companies had a virtual industry monopoly on long distance transportation. As early as the 1920’s however, the trucking industry began to take hold. The defendants are charged with conspiring to restrain trade and monopolize the long-distance freight business in violation of the Sherman Act [p129]. The railroad companies allegedly engaged with Carl Byoir & Associates to develop a publicity campaign against the trucking companies designed to foster the adoption and retention of laws and law enforcement practices destructive of the trucking business, to create a bad public image, and impair the relationships between truckers and their customer [p128]. The Court rejected an attempt to base a Sherman Act conspiracy on evidence consisting entirely of activities of competitors seeking to influence public officials. The Sherman Act, it was held, was not intended to bar concerted action of this kind even though the resulting official action damaged other competitors at whom the campaign was aimed [p669]. The Supreme Court held that mere attempts to influence the legislative branch for the passage of laws, or the executive branch for their enforcement, did not state a claim under the Sherman Act [p582]. This case was used as the basis for the establishment of the Noerr-Pennington Doctrine that protects petitioners from antitrust law if the action is a concerted effort to promote legislative change.

**United Mine Workers of America v Pennington (1965), 381 US 657**

The United Mine Workers of America Welfare and Retirement Fund is seeking unpaid royalties in the sum of $55,000 as per the National Bituminous Coal Wage Agreement of 1950. Philips argues that the agreements between United Mine Workers and large private coal companies that led to the Walsh-Healey Act to set and impose standards industry-wide and outside of union membership are anticompetitive and
unreasonably impacting small private coal companies, eliminating them from the industry [p664]. Therefore there was also an argument made that the various strikes and additional dealings conducted by the UMW were designed to remove small coal companies from the market in favor addressing their concerns of low wages and overproduction [p257]. The court stated, “Joint efforts to influence public officials do not violate the antitrust laws even though intended to eliminate competition” [p582]. In addition, a union has the right to seek the same agreement or pursue similar terms with other employers, as that is the nature of such union behavior [p665]. Therefore, the court also recognized the legitimate aim of unions and other labor organizations to obtain industry-wide labor standards even with the consequence of eliminating competition based on such standards [p666]. However, any action for the purpose to force employers out of business will be taken as prima facie evidence of violation [p673].

American Society of Civil Engineers Consent Decree (1972), Proceedings

In 1949, The Board in charge of the American Society of Civil Engineers (ASCE) approved Canon 4 of their code of ethics, which stated: “it shall be considered unprofessional and inconsistent with honorable and dignified bearing for any member of the American Society of Civil Engineers… to participate in competitive bidding on a price basis to secure a professional engagement.” As a result of Canon 4, many members of the society were expelled or suspended for engaging in price bidding. In 1971, the Department of Justice ordered ASCE to supply them with documents relating to their code of ethics, which soon after, led to the Department of Justice to threaten the society with a civil suit for violating section 1 of the Sherman Antitrust Act. To avoid litigation and exposure to liability, the ASCE and other societies such as the AIA that held similar canons negotiated a consent decree. ASCE modified canon 4. Interestingly, in 1972, the United States Federal Government passed the Brooks Act or the Selection of Architects and Engineers Statute (PL 92-582), which requires that the US Federal Government select engineering and architectural firms based on competency, qualification and experience rather than price.

Goldfarb v Virginia State Bar (1975), 421 US 773

Lewis Goldfarb needed to obtain title insurance and a title examination prior to receiving financing for the purchase of a new home. Shopping for lawyers, Goldfarb was unable to find one that would charge less than the fee prescribed in a minimum-fee schedule published by Fairfax County Bar Association and enforced by Virginia State Bar Association. This class action lawsuit claims that the enforcement of a minimum-fee schedule by professional associations constitutes price-fixing in violation of antitrust law [p773]. The Virginia State Bar Association, a regulatory body that manages membership to the State Bar, condoned the use of fee schedules as ethical duties [p777]. The courts ruled that the State Bar and the County Bar have voluntarily joined in private anticompetitive activities and are therefore not beyond the reach of the Sherman Act [p792]. This established the precedent that the ‘learned professions’ no longer are exempt from the Sherman Act, where previously there was a distinction between business and professions. However, it is important to note that Congress did not intend there to be a sweeping conclusion about the “learned profession” [p774] and therefore maintain that some form of distinction still exists although not clearly defined.

Boddicker v Arizona State Dental Association (1977), 549 F2d 626

The Arizona State Dental Association and the Central Arizona Dental Society are nonprofit corporations with the identical purpose of improving public health and the profession of dentistry. Membership to these organizations is not a prerequisite to the practice of dentistry [p628] but Vernon Boddicker accuses the Arizona State Dental Association and the Central Arizona Dental Society of anticompetitive tying arrangements because they are requiring membership in the American Dental Association as precedent to membership. The court, however, determined that the membership requirements are interpreted to be beneficial to the profession, to improve the practice of dentistry, and to better serve the public because
the ADA requires dental aptitude tests and publication and dissemination of professional journals [p633]. Therefore, the court ruled that the complaint by Boddicker does not adequately allege a restraint on trade substantially affecting interstate commerce. Tying arrangements between professional societies with respect to membership for the purpose of benefiting the profession or the practice for public benefit is not in violation of the Sherman Antitrust Act [p634].


As part of the Arizona State Bar, the Supreme Court of that State regulates and restricts advertising by attorneys [p353]. John Bates is accused of violating State Supreme Court disciplinary rule that prohibits lawyers from advertising. Bates counter argued that the rule is in violation of sections 1 and 2 of the Sherman Act for its anticompetitive effects and infringed on their First Amendment rights [p350]. The state ban on advertising emerged from a rule of etiquette and not a rule of ethics [p371]. By applying the Parker Doctrine, the Court held that a state supreme court, when acting in a legislative capacity, occupies the same position as that of a state legislature. Therefore, a decision of a state Supreme Court, acting legislatively rather than judicially, is exempt from Sherman Act liability as a state action [p568]. The attorneys were suspended temporarily from the practice of law in Arizona for violating a disciplinary rule of the American Bar Association (ABA) that prohibited most lawyer advertising. The Arizona Supreme Court had incorporated the ABA's advertising prohibition into the local Supreme Court Rules. Those Rules also provided that the Board of Governors of the Arizona State Bar Association, acting on the recommendation of a local bar disciplinary committee, could recommend the censure or suspension of a member of the Bar for violating the advertising ban. Therefore, it was determined that such regulation was not in violation of antitrust law despite the regulation emerging from ethical grounds as opposed to competitive.

**National Society of Professional Engineers v United States (1978), 435 US 679**

The National Society of Professional Engineers was organized in 1935 to deal with the nontechnical aspects of the engineering practice such as social and economic aspects for its members [p682]. The United States believed that the National Society of Professional Engineers code of ethics was in violation of Section 1 of the Sherman Act by prohibiting its members from competitive price bidding because it establishes an agreement among competitors to refuse to discuss prices with potential customers until after such negotiations have resulted in a selection of an engineer with the goal that the client chooses based on background and reputation [p679]. If a client requires price information, then the engineer is obliged to withdraw from consideration [p683]. In this case, the engineering society wanted to set standard fees because they felt that price competition will eventually lead to poor quality and would be dangerous to the public health, safety and welfare. While the court affirms that the code of ethics is not price-fixing, it does operate as a ban on competitive bidding, “applied to both complicated and simple projects and to both inexperienced and sophisticated customers [p679]. Therefore, “on its face” the code is an unreasonable restraint on trade [p685]. The court ruled that arguments against competition on the basis that it would produce dire consequences does not support a defense under the Rule of Reason and therefore is a per se violation [p679] despite the implications established by Goldfarb v Virginia State Bar Association on the learned profession.

**Mardirosian v American Institute of Architects (1979), 474 F Supp 628**

Aram Mardirosian charged the AIA for wrongful suspension of his membership in the professional organization because Mardirosian argued that the AIA’s enforcement of Standard 9 of the code of ethics that prohibits the submission of competitive fee quotations to obtain a commission when another legally qualified architect has already been selected or employed is a unreasonable restraint on trade and in violation of the Sherman Act. The District Court held that the ethical standard prohibiting an architect from seeking a commission for which another architect has been selected was facially anticompetitive. It also determined that anticompetitive effects of the standard cannot be justified to promote integrity or that it
reflects the common-law tort of interference in contractual relations. This case reaffirms the Goldfarb v Virginia State Bar Association ruling that the learned professions are not exempt from anticompetitive activities on the basis that competition itself is unreasonable.

California Retail Liquor Dealers Association v Midcal Aluminum (1980), 445 US 97

California statute requires all wine producers and wholesalers to file fair trade contracts or price schedules with the State. If a producer has not set prices through a fair trade contract, wholesalers must post a resale price schedule and are prohibited from selling wine to a retailer at other than the price set in a price schedule or fair trade contract. A wholesaler selling below the established prices faces fines or license suspension or revocation. The Court of Appeal ruled that the scheme restrains trade in violation of the Sherman Act, and granted injunctive relief, rejecting claims that the scheme was immune from liability under that Act under the "state action" doctrine of Parker v. Brown. The result was the development of a two part test for the application of the state action immunity doctrine previously established by parker v brown known as the Midcal test. The California statute that requires wine producers and wholesalers to abide by a price schedules is a method of resale price maintenance in violation of the Sherman act and therefore not protected under the Parker v Brown immunity for its restraint on trade.

Arizona v Maricopa County Medical Society (1982), 457 US 332

The Maricopa County Medical Society is a nonprofit Arizona corporation composed of 1,750 various medical doctors and representing approximately 70% of practitioners in Maricopa County [p339]. The Maricopa County Medical Society, in partnership with other societies, established the Maricopa Foundation to promote an alternative to typical health insurance plans through a fee-for-service medicine practice. The principle is based on establishing a maximum set of fees for doctors to claim from the health service [p332, 339]. The State of Arizona charged the Maricopa County Medical Society with engaging in illegal price-fixing in violation of Section 1 of the Sherman Act [p332]. It was determined that maximum price/fee agreements - as price-fixing - are per se unlawful under Section 1 of the Sherman Act [p332], despite the seemingly benevolent reasons for such actions as setting a maximum charge. In the end, the fee limits provide a uniform economic reward to all practitioners disregarding quality of service, skill, experience and training of individual practitioners [p332].


The FTC charged Indiana dentists with withholding x-rays from dental insurers when evaluating patients' claims for benefits in violation of Section 5 of the Federal Trade Commission Act and Section 1 of the Sherman Act [p447]. In 1976, a small number of Indiana dentists formed the Indiana Federation of Dentists in order to continue restricting the submission of x-rays. Organized like a 'union', it had hoped this label would minimize antitrust action [p451]. The Federation argued that x-rays in the hands of insurers can lead to inaccurate determinations of the proper level of care and result in injury [p452]. The Court found that an agreement by dentists not to submit dental X-rays to insurers violated the rule of reason [p447] [p793].

North Carolina Board of Dental Examiners v Federal Trade Commission (2015), No. 13-534

North Carolina Dental Practice Act gives the North Carolina State Board of Dental Examiners the authority by the State to regulate the practice of dentistry. Additionally, it gives the NCSBDE the authority to create and enforce a licensing system for dentists [p6] but the board must comply with the State's Administrative Procedure Act, Public Records Act, and open-meeting laws [p7]. The FTC alleged that the North Carolina State Board of Dental Examiners has excluded non-dentists from the market of teeth whitening and has therefore engaged in anticompetitive and unfair methods under the Federal Trade Commission Act [p1]. Dentists started teeth whitening practices in North Carolina in the 1990's and non-dentists began by 2003 [p7]. In an effort to maintain business for dentists, in 2006, the Board issued 47 cease-and-desist order to
non-dentists performing teeth whitening services [p8]. However, the court determined that teeth whitening is not part of "the practice of dentistry" and it was later determined that the North Carolina State Board of Dental Examiners are not under the protection of Parker immunity because state immunity does not transfer to state appointed associations. Therefore the actions to regulate outside of the “business of dentistry” and outside of state protection were deemed illegal [p2].
The Consent Decree

UNited States District Court
For the
District of Columbia
Civil Action No. 992-72

UNITED STATES OF AMERICA,
Plaintiff,

THE AMERICAN INSTITUTE OF ARCHITECTS,
Defendant.

FINAL JUDGMENT

Plaintiff, the United States of America, having filed its complaint herein on May 17, 1972 and plaintiff and defendant, by their respective attorneys, having each been permitted to the entry of this Final Judgment after trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting evidence or submission by any party with respect to any issue of fact or law herein.

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties hereto, it is hereby

ORDERED, ADJUDGED and DECREED as follows:

I

The provisions of this Final Judgment shall apply to the defendant and to the defendant’s state organization and chapters in the United States and territories thereof, to the defendant’s officers, directors, agents, employees, successors and assigns, and to all other persons in active concert or participation with any of those who receive notice of this Final Judgment by personal service or otherwise.

III

The defendant is enjoined and restrained from adopting any plan, program or course of action which prohibits members of the defendant from at any time submitting price quotations for architectural services.

IV

The defendant is ordered and directed, within 60 days from the date of entry of this Final Judgment, to amend its Standards of Ethical Practice, rules, bylaws, resolutions, and any other policy statements to eliminate therefrom any provision which prohibits or limits the submission of price quotations for architectural services by members of the defendant or which states or implies that the submission of price quotations for architectural services by members of the defendant is unethical, unprofessional, or contrary to any policy of the defendant.

V

The defendant is enjoined and restrained from adopting or disseminating, in any of its publications or otherwise, any

Standard of Ethical Practice, rule, bylaw, resolution or policy statement which prohibits or limits the submission of price quotations for architectural services by members of the defendant or which states or implies that the submission of price quotations for architectural services by members of the defendant is unethical, unprofessional, or contrary to any policy of the defendant.

VI

VII

VIII

For the purpose of securing compliance with this Final Judgment; and for no other purpose, duly authorized representatives of the Department of Justice shall upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division upon reasonable notice to defendant made to its principal office be permitted, subject to any legally recognized privilege:

(A) access during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or control of defendant relating to any of the matters contained in this Final Judgment; and

(B) subject to the reasonable convenience of defendant and without restraint or interference from it, to interview the officers and employees of defendant who may have counsel present, regarding any such matters.

For the purpose of securing compliance with this Final Judgment, defendant upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such written reports relating to any of the matters contained in this Final Judgment as may from time to time be requested. No information obtained by the means provided in this Section shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

IX

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, or the modification or termination of any of the provisions thereof or for the enforcement of compliance therewith, and for the punishment of violations of any of the provisions contained herein.

Dated: June 19, 1972

/\ Charles R. Richen
United States District Judge

Appendix C. AIA Consent Decree 1972 (with letter)
UNITED STATES DISTRICT COURT 
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, 

Plaintiff,

v.

THE AMERICAN INSTITUTE OF ARCHITECTS,

Defendant,

Civil Action No. 90-1567

FINAL JUDGEMENT

Plaintiff, the United States of America, having filed its complaint on July 5, 1990, and plaintiff and defendant, by their respective attorneys, having each consented to the entry of this Final Judgement without trial or adjudication of any issue fact or law without this Final Judgement constituting evidence or admission by any party with respect to any issue of fact or law.

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law, and upon the consent of the parties, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I.

This court has jurisdiction of the subject matter of and parties to this action. The complaint states a claim upon which relief may be granted against defendant under Section 1 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. § 1), commonly known as the Sherman Act.

II.

The provisions of this Final Judgement shall apply to defendant, to defendant's state and local organizations and chapters (hereafter "components") in the United States and territories thereof, to the officers, directors, agents, employees, successors, and assigns of defendant and its components, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgement by personal service or otherwise.

III.

Defendant and its components are enjoined from:

(A) Directly or indirectly initiating, adopting, or pursuing any plan, program, or course of action that has the purpose or effect of prohibiting or restraining AIA members from engaging in the following practices: (1) submitting, at any time, competitive bids or price quotations, including circumstances where price is the sole or principal consideration in the selection of an architect; (2) providing discounts; or (3) providing free services (hereafter "practices in Section III (A)").
(B) Directly or indirectly adopting, disseminating, publishing, or seeking adherence to any code of ethics, rule, bylaw, resolution, policy, guideline, standard, or statement made or ratified by an official of defendant or any of its components that has the purpose or effect of prohibiting or restraining AIA members from engaging in any of the practices identified in Section III (A) above, or that states or implies that any of these practices are, in themselves, unethical, unprofessional, or contrary to any policy of the AIA or any of its components.

IV.

(A) Nothing in this Final Judgement shall prohibit any individual architect or architectural firm, acting alone and not on behalf of defendant or any of its components, from refusing to engage in any of the practices identified in Section III (A) above, or from expressing an opinion regarding those practices.

(B) Nothing in this Final Judgement shall prohibit defendant or its components from advocating or discussing, in accordance with the doctrine established in Eastern Railroad Presidents Conference v. Noerr Motor Freight Inc., 365 U.S. 127 (1961) and its progeny, legislation, regulatory actions, or governmental policies or actions, relating to the practices identified in Section III (A) above.

V.

(A) Defendant and its components are ordered, within sixty (60) days from the date of entry of this Final Judgement in the case of defendant and within ninety (90) days in the case of the components, to review their code of ethics, rules, bylaws, resolutions, guidelines, manuals, and policy statements and to eliminate therefrom, so far as it may be necessary to do so, any provision that violates Section III above.

(B) Defendant and its components are ordered to publish in their current code of ethics within one hundred and twenty (120) days from the date of entry of this Final Judgement, and in all subsequent editions during the term of this Final Judgement, a prominently placed statement that the practices identified in Section III (A) above are not, in themselves, unethical, unprofessional, or contrary to any policy of defendant or its components.

(C) Defendant is ordered to submit for review and to require each component to submit for review to the Decree Committee, established pursuant to Section VIII below, each proposed code of ethics, rule, bylaw, resolution, guideline, manual, or written policy that deals with the practices identified in Section III (A) above, except that no statement permitted pursuant to Section IV above need be submitted. No proposal required to be reviewed by the Decree Committee pursuant to this Section may be disseminated, beyond those persons responsible for drafting or issuing the proposal, without prior approval by the Decree Committee.
Defendant is ordered:

(A) To send, within forty-five (45) days from the date of entry of this Final Judgement, a copy of this Final Judgement to each component and to each AIA member, together with a written statement that AIA members are free to engage in the practices identified in Section III(A) above regardless of anything defendant or its components may have said about these practices in the past;

(B) To cause the publication of this Final Judgement in the three consecutive issues of the AIA Memo following the date of entry of this Final Judgement; and

(C) For a period of ten (10) years following the date of entry of this Final Judgement:

(1) to send a copy of this Final Judgement to each new AIA member no later than ten (10) days after membership in the AIA is granted;

(2) to provide annually to each director, officer, and Executive Management Committee member of defendant, each non-clerical employee of defendant’s Component Affairs and Governmental Affairs Departments, the president of each of defendant’s components, and each member of the Council of Architectural Component Executives, a copy of this Final Judgement, and to obtain an annual written certification from those persons that they received, read, understand, and agree to abide by this Final Judgement and that they have been advised and understand that noncompliance with the Final Judgement may result in disciplinary measures and also may result in conviction of the person for criminal contempt of court;

(3) to obtain annually from an official of each component a written certification, to the best of the certifying official’s knowledge and belief, that copies of this Final Judgement have been distributed to the board and officers of the component, that each member of the board and each officer has read, understands, and agrees to abide by this Final Judgement, and that the programs required by Section VII(C) below have been conducted, and

(4) to require annually an official of each component to report in writing any violation or potential violation of this Final Judgement to the Decree Committee established under Section VIII below.

VII

Defendant is ordered to maintain an antitrust compliance program which shall include the following:

(A) An annual briefing of defendant’s Board of Directors, Executive Management Committee, officers, and non-clerical employees on this Final Judgement and the antitrust laws;

(B) A program conducted for all participants at each annual Grassroots convention on this Final Judgement and the antitrust laws; and
(C) Programs conducted annually at a general membership meeting of each of defendant's components, and at each regularly scheduled regional meeting of defendant's components, and at this Final Judgement and the antitrust laws. These programs, and the programs conducted pursuant to Section VII(B) above, need not be conducted by defendant's own personnel.

VIII.

(A) Defendant shall establish a Decree Committee consisting of at least two attorneys within the General Counsel's office. The Decree Committee shall institute the actions set forth in this Section with the purpose of achieving compliance with this Final Judgement. The Decree Committee shall, on a continuing basis, supervise the review of the current and proposed activities of defendant and its components to seek to ensure that defendant and its components comply with this Final Judgement.

(B) The Decree Committee shall maintain reasonable records of all its deliberations and meetings. The Decree Committee, however, need not keep records of those activities that are clearly insignificant to the implementation of or compliance with this Final Judgement.

(C) Not later than one hundred and twenty (120) days after the date of entry of this Final Judgement, the Decree Committee shall certify to the Department of Justice ("the Department") whether to the best of its knowledge and belief defendant and its components have complied with the provisions of Sections VI(A) and (B) and VII(A) and (B) above to the extent compliance is required within the time period indicated therein.

(D) For a period of ten (10) years following the date of entry of this Final Judgement, the Decree Committee shall certify annually to the Department whether to the best of its knowledge and belief defendant and its components have complied with the provisions of Sections VI(C) and VII above.

(E) If, in the course of obtaining the information necessary to provide the certifications set forth in Section VIII(C) and (D) above, or at any other time, any member of the Decree Committee learns of any actual or proposed activity that violates or is implemented would violate Section III of this Final Judgement, defendant shall, within forty-five (45) days after such knowledge is obtained, undertake appropriate action to terminate or modify the activity in order to comply with this Final Judgement. If the actual or potential violation is not cured within this forty-five (45) day period, defendant shall submit a written report to the Department no later than fifteen (15) days after the end of this period. Such written report shall describe the relevant activity; identify the relevant provisions of the Final Judgement; describe the relevant legal issues under the Final Judgement; state when the activity began; state when the activity first came to the attention of the Decree Committee; and state the steps that defendant has taken or plans to take to terminate or modify the activity in order to comply with this Final Judgement.
IX.

If, after the entry of this Final Judgement, defendant or any of its components violates or continues to violate Section III above, the Court may, after notice and hearing but without any showing of willfulness or intent, impose upon defendant and/or upon its components a civil fine for such violation in such amount as may be reasonable in light of all surrounding circumstances. Such a fine may be levied upon defendant and/or upon its components for each separate violation of Section III above. Such a fine may not be levied, however, on any natural person.

X.

Nothing in this Final Judgement shall bar the United States from seeking or the Court from imposing against defendant or any person, in addition to or in lieu of the civil penalties provided for in Section IX above, any other relief available under any other applicable provision of law for violation of this Final Judgment.

XI.

During the term of this decree, Defendant is enjoined and restrained from allowing the 1984 President of the Chicago Chapter to hold any office, sit on any board of directors or chair or serve on any committee or subcommittee of defendant or any of its components (except that the foregoing shall not prevent maintenance of a general membership or participation in AIA as a general member).

XII.

(A) For the purpose of determining or securing compliance with this Final Judgement and for no other purpose, duly authorized representatives of the Department shall, upon written request of the Assistant Attorney general in charge of the Antitrust Division, and on reasonable notice to defendant or any component, be permitted:

(1) access during office hours of defendant or any component to inspect and copy all records and documents in the possession or control of defendant or any component relating to any matters contained in this Final Judgement; and

(2) subject to the reasonable convenience of defendant or any component, and without restraint or interference from defendant or its components, to interview officers, employees, and agents of defendant or any component, who may have counsel present, regarding any such matters.

(B) Defendant shall not assert against the Department any claim of privilege with respect to any records or documents maintained by the Decree Committee, except those records or documents (or portions thereof) relating solely to compliance by defendant or its components with Section III of this Final Judgement. This exception, however, shall not apply, and no privilege may be asserted against the Department, with respect to any records or documents (or portions thereof) relating to any activity reported to the Department pursuant to Section VIII(E) above. This provision does not constitute a waiver of any privilege as to parties other than the United States.
(C) Upon written request of the Assistant Attorney General in charge of the Antitrust Division, defendant and its components shall submit such written reports, under oath if requested, relating to any of the matters contained in this Final Judgement as may be requested.

(D) No information or documents obtained by the means provided in this Section shall be divulged by any representative of the Department to any person other than a duly authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgement, or as otherwise required by law.

XIII.

This Final Judgement shall expire ten (10) years from the date of entry.

XIV.

This Final Judgement shall supersede and terminate the Final Judgement in United States v. The American Institute of Architects, Civil Action No. 992-72, entered on June 19, 1972, which shall henceforth have no force or effect.

XV.

In settlement of the claims of the United States against defendant arising from this action, defendant is ordered and directed to pay to the United States the costs of the investigation in this matter in the amount of $50,000 upon entry of this Final Judgement.

XVI.

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgement to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgement, for the modification or termination of any of its provisions, for its enforcement or compliance, and for the punishment of violations of any of its provisions.

XVII.

Entry of this Final Judgement is in the public interest.

/s/ Charles R. Richey
United States District Judge

Dated: October 31, 1990
Appendix E. AIA Statement of Services & Charges of the Architect (1960)
8. ADDITIONAL SERVICES

These services involve satisfactory installation of the Architect's drawings, including structural and mechanical systems, and are not included in the scope of services otherwise indicated.

9. DOCUMENTS

Documents and specifications shall be submitted to the Owner for final approval prior to the construction of the work. The Architect shall be responsible for the accuracy and completeness of the drawings and specifications, and for the coordination of all disciplines involved in the project.

10. CONTRACT DOCUMENTS

The contract documents include:

- Final Drawings and Specifications
- As-built Drawings and Reports
- Construction Administration Services
- Change Order Tracking
- Final Closeout

11. ADDITIONAL SERVICES

These services involve the preparation of construction documents, including structural and mechanical systems, and are not included in the scope of services otherwise indicated.

12. DOCUMENTS

Documents and specifications shall be submitted to the Owner for final approval prior to the construction of the work. The Architect shall be responsible for the accuracy and completeness of the drawings and specifications, and for the coordination of all disciplines involved in the project.

13. CONTRACT DOCUMENTS

The contract documents include:

- Final Drawings and Specifications
- As-built Drawings and Reports
- Construction Administration Services
- Change Order Tracking
- Final Closeout

14. ADDITIONAL SERVICES

These services involve the preparation of construction documents, including structural and mechanical systems, and are not included in the scope of services otherwise indicated.

15. DOCUMENTS

Documents and specifications shall be submitted to the Owner for final approval prior to the construction of the work. The Architect shall be responsible for the accuracy and completeness of the drawings and specifications, and for the coordination of all disciplines involved in the project.

16. CONTRACT DOCUMENTS

The contract documents include:

- Final Drawings and Specifications
- As-built Drawings and Reports
- Construction Administration Services
- Change Order Tracking
- Final Closeout

17. ADDITIONAL SERVICES

These services involve the preparation of construction documents, including structural and mechanical systems, and are not included in the scope of services otherwise indicated.

18. DOCUMENTS

Documents and specifications shall be submitted to the Owner for final approval prior to the construction of the work. The Architect shall be responsible for the accuracy and completeness of the drawings and specifications, and for the coordination of all disciplines involved in the project.

19. CONTRACT DOCUMENTS

The contract documents include:

- Final Drawings and Specifications
- As-built Drawings and Reports
- Construction Administration Services
- Change Order Tracking
- Final Closeout

20. ADDITIONAL SERVICES

These services involve the preparation of construction documents, including structural and mechanical systems, and are not included in the scope of services otherwise indicated.

21. DOCUMENTS

Documents and specifications shall be submitted to the Owner for final approval prior to the construction of the work. The Architect shall be responsible for the accuracy and completeness of the drawings and specifications, and for the coordination of all disciplines involved in the project.

22. CONTRACT DOCUMENTS

The contract documents include:

- Final Drawings and Specifications
- As-built Drawings and Reports
- Construction Administration Services
- Change Order Tracking
- Final Closeout

23. ADDITIONAL SERVICES

These services involve the preparation of construction documents, including structural and mechanical systems, and are not included in the scope of services otherwise indicated.

24. DOCUMENTS

Documents and specifications shall be submitted to the Owner for final approval prior to the construction of the work. The Architect shall be responsible for the accuracy and completeness of the drawings and specifications, and for the coordination of all disciplines involved in the project.

25. CONTRACT DOCUMENTS

The contract documents include:

- Final Drawings and Specifications
- As-built Drawings and Reports
- Construction Administration Services
- Change Order Tracking
- Final Closeout
SECTION 4
Payment to the Architect

Payment of the Architect's compensation is made from time to time as the work of the Architect progresses and expense is incurred by him, whether the work is measured, computed or otherwise. The method of payment varies with the nature of the compensation, as follows:

A. PERCENTAGE OF THE CONSTRUCTION COST OF THE WORK

1. The work of Professional Services represents twenty-five per cent (25%) of the total base fee, plus any reimbursable expenses, usually paid as follows:
   - Ten percent (10%) as a retainment payment on or completion of administrative drawings;
   - Fifteen percent (15%) on receipt of permission of the preliminary services.

2. Upon completion of the Correction Documents, the Architect is entitled to an additional fifty percent (50%) of the total base fee, plus any reimbursable expenses, usually paid in installments proportionate to the progress of the Architect's work.

3. During the construction period, additional payment or amount to the Architect, plus any reimbursable expenses, are made as work progresses.

4. Final payment is made to the Architect on substantial completion of the construction work.

5. UNLESS UNDER TERM OF DIRECT PERSONAL, DOMESTIC, PROFESSIONAL, IN, ANNUAL FEES, AND THE WORK IS CONTINUED

Payment of the Architect's Compensation is made monthly as the work progresses and is expensed with the Professional Fee or Annual Fees paid in accordance with the progress of the Architect's services.

SECTION 5
Supplemental Information

Certain elements of the original agreement between Owner and Architect are worthy of explanation and interpretation as follows:

A. COST OF THE WORK

The cost of the work is the sum of the following elements: the total construction cost of the project, plus the Architect's compensation, professional services, and the architect's expenses, as determined from the following sources with precedence in the order listed:

1) The aggregate of the lowest acceptable lump sum contracts received for all portions of the project, or the total cost of the work, if completed.

2) The estimated cost quoted by an estimate jointly selected by the Owner and Architect, and paid by the Owner.

3) The total cost paid by the owner's preliminary professional services.

This work will not be reduced by the furnishing of material and labor by the Owner for work that the Owner is responsible for furnishing.

B. ABANDONMENT OF THE WORK AND TERMINATION OF CONTRACT

Should the work be abandoned for any reason, the Architect is reimbursed for such part of the services for which he has been engaged at the time of the abandonment and payment of such compensation shall be in accordance with the terms of the contract through the date of termination.

C. THE RESPONSIBILITY OF THE OWNER

It is an important responsibility of the Owner that his factual information as to the requirements of the work, and further design decisions in connection with the work.
11. An Architect in soliciting work shall not divide fees except with professionals related to building design, and there shall be no undisclosed payments or kickbacks to associates with the Architect.

12. An Architect shall not use past advertising nor use self-promotion, impersonation or misleading publicity.

13. An Architect shall not solicit, give personal to solicit in his name, advertisements or other support, nor sell or distribute any publication containing his work.

14. An Architect shall conform to the necessary laws governing the practice of architecture in any state in which he practices and shall observe the standards for ethical conduct established by the local Architectural Professional Bodies.

15. An Architect shall, at all time, be in a manner beneficial to the best interest of the profession.
### Schedule of Recommended Minimum Basic Rates

For Basic Services (Sections 24.1, 2.8.3) Including Normal Engineering, With The Fee A Percentage Of The Total Cost Of The Work (Section 3.4.2)

<table>
<thead>
<tr>
<th>Schedule</th>
<th>Type of Project</th>
<th>Cost of the Work in Millions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Hospitals + Veterans + Correction Halls + Stadiums + Oce &amp; Rail + Substations</td>
<td>Up To $100,000</td>
</tr>
<tr>
<td>2</td>
<td>Railroads + Interurban + Cell Storage + Rail + Plants + Parking + Printers + Utility Structures</td>
<td>$0.00</td>
</tr>
<tr>
<td>3</td>
<td>Railroads + Railways + Park &amp; Recreation Structures + Playgrounds + Swimming Pools</td>
<td>$0.80</td>
</tr>
<tr>
<td>4</td>
<td>Banks + Broadcast Facilities + Exchange + Telegraphs</td>
<td>$3.00</td>
</tr>
<tr>
<td>5</td>
<td>City &amp; Town Halls + Clubs + Civic &amp; Recreation + Police Stations + Fire Stations + Post Offices</td>
<td>$0.80</td>
</tr>
<tr>
<td>6</td>
<td>Universities &amp; Colleges + Religious Buildings + Seminaries + Libraries</td>
<td>$0.80</td>
</tr>
<tr>
<td>7</td>
<td>Community Colleges + Elementary Schools + Police Stations + Fire Stations</td>
<td>$0.80</td>
</tr>
<tr>
<td>8</td>
<td>Court Houses + State Capitol + Museums + Art Galleries</td>
<td>$0.80</td>
</tr>
<tr>
<td>9</td>
<td>Department Stores + Shops + Retail + Studio + Farm Tracts</td>
<td>$0.80</td>
</tr>
<tr>
<td>10</td>
<td>Schools + Restaurants + Country Diners + Farm Buildings</td>
<td>$0.80</td>
</tr>
<tr>
<td>11</td>
<td>Municipal Buildings + Fuel Plants</td>
<td>$0.80</td>
</tr>
<tr>
<td>12</td>
<td>Parks + Parks + Buildings + Warehouses</td>
<td>$0.80</td>
</tr>
<tr>
<td>13</td>
<td>Offices + Hotels + Resort Structures + Apartment Hotels + Housing + Private</td>
<td>$0.80</td>
</tr>
<tr>
<td>14</td>
<td>Housing, Public &amp; Industrial + Development + Specials</td>
<td>$0.80</td>
</tr>
<tr>
<td>15</td>
<td>Hospitals + Clinics + Medical Centers</td>
<td>$0.80</td>
</tr>
<tr>
<td>16</td>
<td>Schools + Libraries + Public Libraries + Postal</td>
<td>$0.80</td>
</tr>
<tr>
<td>17</td>
<td>Office Buildings + Commercial + Retail</td>
<td>$0.80</td>
</tr>
<tr>
<td>18</td>
<td>Laboratories + Research + Data Centers + Communication Structures</td>
<td>$0.80</td>
</tr>
<tr>
<td>19</td>
<td>Research Centers + Historical + Libraries + Garages</td>
<td>$0.80</td>
</tr>
<tr>
<td>20</td>
<td>Office Buildings + Special Economy + Administration Buildings</td>
<td>$0.80</td>
</tr>
<tr>
<td>21</td>
<td>Shopping Centers + Retail Type</td>
<td>$0.80</td>
</tr>
</tbody>
</table>

**Notes:**

These rates apply for the Basic Services of the Architect (Sec. 24.1)

- 75% of the Scheduled Fee is recommended where no Office or Field Administration is provided by the Architect
- 90% of the Scheduled Fee is recommended where no Field Administration is provided by the Architect
- Because of the additional services involved, the basic rate should be increased.
- For Alternations or Additions to an Existing Structure, when the work is let by Separate Contracts, the cost of the work is between listed amounts the fees are interpolated.

For these types of project, special rates are usual, often on a multiple of drafting cost.\*
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I. INTRODUCTION

It is the practice of The American Institute of Architects ("the Institute" or "the AIA") and its members to comply strictly with all laws, including federal and state antitrust laws, that apply to AIA operations and activities. Compliance with the letter and spirit of the antitrust laws is an important goal of the AIA, and is essential to maintaining the Institute's reputation for the highest standards of ethical conduct.

The procedures discussed below update the AIA's continuing antitrust compliance program and are to be observed by each of you – AIA officers and employees, AIA members, and other persons – who may be involved in any way in the AIA's operations and activities. While the AIA General Counsel's Office has been assigned to oversee the AIA's antitrust compliance program, the program cannot work unless each of us does our part.

II. THE ANTITRUST LAWS: A BASIC FRAMEWORK

Antitrust laws are designed to promote vigorous and fair competition, and to provide American consumers with the best combination of price and quality. These procedures focus mainly on the federal antitrust and trade regulation laws created by the Sherman Act, Clayton Act, Robinson-Patman Act and Federal Trade Commission Act. Most states and the District of Columbia have their own antitrust laws, which frequently (although not always) parallel the federal laws.

The U.S. Department of Justice is authorized to prosecute Sherman Act violators as criminal felons, who may be severely fined and, in the case of individuals, imprisoned. In addition, the Justice Department, state attorneys general and private parties may bring civil suits and recover three times (treble) their actual damages, court costs and (in private suits) their attorneys' fees from corporations and individuals who have violated the federal antitrust laws. The Federal Trade Commission has its own statutory authority to enforce antitrust laws through civil and administrative proceedings.

III. POSSIBLE ANTITRUST VIOLATIONS TO AVOID

1. Agreements That Restrain Competition - Section 1 of the Sherman Act

The most common antitrust violations of which you should be aware fall within Section 1 of the Sherman Act. They result from agreements – typically with competitors, customers or suppliers – that unreasonably restrain competition. Thus, the antitrust laws prohibit the AIA and its members from agreeing to do certain things that they could legally do if they acted independently.

Any type of agreement, understanding or arrangement between competitors, whether written or oral, formal or informal, express or implied, that limits competition is subject to antitrust scrutiny. Moreover, any attempt to reach such an agreement may be unlawful, even if it is unsuccessful.
2. Some Troublesome Agreements

The courts have found that certain types of agreements always (or almost always) violate the antitrust laws. They include agreements of the kinds discussed here.

**Price-fixing and bid-rigging agreements.** Any agreement between competitors on prices charged to others for products or services violates the antitrust laws. Every direct price-fixing agreement is illegal, whether it is meant to raise, lower or just stabilize prices. Agreements may be illegal as well even if they only indirectly affect prices because they involve such things as discounts, promotional allowances, standardization of customer or delivery services, or uniform credit terms and billing practices. It is also illegal for competitors to agree on the prices they will pay for products or services sold by other persons, or to engage in collusive bidding practices (or "bid rigging").

**Agreements to allocate markets, customers, territories or products.** It is illegal for competitors to agree to divide or allocate customers or territories. An agreement among competitors is also illegal if it provides that they will refrain from selling a certain product generally, or in any geographic territory or to any category of customer.

**Group boycotts and collective refusals to deal.** Agreements among independent concerns that they will boycott or refuse to buy from particular suppliers or sell to particular customers are generally prohibited by the antitrust laws. This does not necessarily preclude sharing certain information about a supplier or customer (e.g., concerning its credit history) so long as there is no discussion on whether to deal with it.

**Agreements to control production.** Agreements among competitors to increase or restrict services or production levels are always problematic under the antitrust laws. The same is true of agreements among competitors to limit the quality of production, restrict the products or services sold to a particular customer, refrain from introducing new products and services or eliminating old ones, or accelerate the introduction or withdrawal of a product or service.

**Tying Arrangements.** A "tie-in" or "tying" arrangement permits a buyer to purchase one (tying) product or service only if it agrees to buy a second, distinct (tied) product or service from the seller. These types of agreements should be avoided.
ACTIVITIES THAT ILLEGALLY RESTRAIN COMPETITION

- AIA operations and activities must not be used to reach or further agreements among members (or other persons) in any of the following areas:
  - The AIA’s or members’ prices for products or services
  - Allocations of markets, customers, territories or products
  - Collective refusals to deal with anyone
  - Limitations on production
  - Tying arrangements

- To avoid even the appearance of impropriety, the subjects indicated above must not be discussed or addressed in the course of any AIA-related operations, events or other activities without the prior approval of counsel.

3. Other Types of Agreements That Also May Raise Concerns Under the Antitrust Laws

Here are some examples — though not a complete list — of agreements whose legality depends on the circumstances involved.

**Exclusive Dealing.** Exclusive dealing arrangements come in various forms. Some might require a customer to sell exclusively the products of a particular company, or coerce a supplier into refusing to sell to its customer’s competitors. Others might compel a customer to purchase all of its requirements for a particular product or service from a single supplier.

**Reciprocity.** In a reciprocal dealing arrangement, a customer makes purchases from a supplier only on the condition that the supplier will buy products or services from the customer. Such reciprocal arrangements are particularly troublesome when they are openly or implicitly coerced.

**Product Standardization.** Competitors may create lawful agreements to establish industry product standards. Those agreements may cause problems under the antitrust laws, however, if they have an anticompetitive effect (e.g., where standardization makes it easier for competitors to set common prices).
**Resale price agreements.** An agreement between a seller and a customer on the price at which the customer will resell a product is frequently problematic. The seller may, however, suggest a resale price so long as it is completely clear that the customer is free to accept or reject the suggestion, and will not be penalized if it decides to disregard the suggestion.

**ACTIVITIES THAT ALSO MAY BE ILLEGAL, DEPENDING ON THE CIRCUMSTANCES**

- AIA operations and activities must not be used to reach or further agreements among members (or other persons) in any of the following areas *without the prior approval of counsel*:
  - Exclusive dealing arrangements
  - Reciprocal sales and purchase arrangements
  - Product standardization
  - The prices at which products or services should be resold

- To avoid even the appearance of impropriety, the subjects indicated above must not be discussed or addressed in the course of any AIA-related operations, events or other activities *without the prior approval of counsel*.

**4. Other Conduct That May Violate the Antitrust Laws Even Without an Agreement of Any Type**

You should also be aware of antitrust law violations that may take place even where there is no agreement among competitors or anyone else. The most common violations of that type are briefly discussed here.

**Monopolization.** The law of monopolization (including attempts to monopolize and agreements to monopolize) is extremely complicated. Basically, when any enterprise enjoys a strong market position for a particular product, it should be concerned about questions of monopolization. The law of monopolization often comes into play in mergers or acquisitions for companies that actually compete, or could compete with each other. No enterprise should take actions that might be viewed as evidence of an intent to acquire or maintain monopoly power in a particular market, to drive a particular competitor out of business, or to prevent somebody from entering the market.

**Price Discrimination.** The Robinson-Patman Act and some state antitrust laws restrict a seller from charging different prices for its goods to competing customers at the same point in time. Those laws also forbid sellers in certain circumstances to discriminate when they offer promotional materials,
services or other inducements to individual customers in an effort to have the customers engage in in-house promotions or advertising. Buyers are in turn prohibited from knowingly inducing or receiving a discriminatory price, promotional allowance, or service. These general prohibitions have a number of exceptions, which are too complex to be discussed here.

Unfair Competition. The Federal Trade Commission Act (also called the “FTC Act”) prohibits all “unfair methods of competition” and “unfair or deceptive acts or practices.” The FTC Act covers antitrust violations like those discussed above, but also forbids conduct that falls short of those violations. The FTC Act prohibits all forms of deceptive or misleading advertising and trade practices, such as disparaging a competitor’s product, harassing a customer or competitor, and stealing trade secrets and customer lists.

<table>
<thead>
<tr>
<th>Contact legal counsel for advice in any situations that may involve:</th>
</tr>
</thead>
<tbody>
<tr>
<td>◯ Attempts to eliminate competition</td>
</tr>
<tr>
<td>◯ Price discrimination</td>
</tr>
<tr>
<td>◯ Advertising of products or services</td>
</tr>
<tr>
<td>◯ Potentially unfair business practices (e.g., acquiring customer lists)</td>
</tr>
</tbody>
</table>

IV. ANTITRUST MATTERS OF PARTICULAR INTEREST TO PROFESSIONAL SOCIETIES

A number of antitrust cases against professional societies and trade associations have focused on situations that go to the heart of what those organizations are about.

Membership. Because a professional society or a trade association by its very nature provides certain commercial and other benefits to its members, the denial of membership to qualified competitors of the members could violate antitrust laws. Membership should be open to all who satisfy basic membership requirements, and any decision to deny membership or expel a member should be reviewed with counsel. All persons in any class of membership should have an equal opportunity to participate in AIA activities and benefits. In addition, certain programs and activities may need to be opened to nonmembers if their exclusion would put them at an unreasonable competitive disadvantage to members.

Collection and Dissemination of Data. Statistical data may obviously be compiled for legitimate purposes. Statistical information also may cause problems from an antitrust standpoint, however, if their use somehow harms competition. This might happen, for instance, if statements in AIA publications were to suggest what production, price, or specific market demand should or would be in the future. Broadly speaking, the farther removed the data are from prices and costs, the less company-specific they are, the more historical they are, and the wider their public dissemination is, the less likely it is that they will raise antitrust problems. As a general rule, particular market-sensitive data supplied by
individual members should never be discussed or disseminated beyond the AIA without advice of counsel.

**Codes, Standards and Certification Programs.** Reasonable industry codes, standards and certification programs may promote quite valid interests, including the protection of safety, health and the environment and the maintenance of high standards of ethics and conduct. You should nonetheless be alert for anticompetitive effects that a particular standard may have. For example, a product standard that is unreasonably biased in favor of one manufacturer’s product at the expense of another’s may raise significant antitrust problems. Care should therefore be used both in creating and applying codes, standards and certification criteria, and in influencing other organizations as they do so.

**Marketing and Communications.** Like the other activities discussed above, marketing and communications serve valid interests, but can raise antitrust problems under some circumstances. Be careful that all advertising, announcements, and other communications that might affect competition are accurate, and are in no way deceptive or misleading. Cooperative advertising programs may be suspect if they discriminate and benefit certain members at the expense of their competitors.

**Government Relations.** There is a constitutional right to petition legislatures and government agencies for action, and, if properly undertaken, such activity is not subject to the antitrust laws. The right to petition, however, does not provide unlimited antitrust protection. If the activity in question is not really designed to achieve government action but rather amounts to a sham used to injure competition, for example, it may raise serious antitrust problems. Moreover, activity is not immunized from the antitrust laws simply because a government representative encourages and happens to participate in it.

V. SOME PRACTICAL GUIDELINES ON PREVENTING PROBLEMS AT MEETINGS, IN RECORDS, AND IN CONTACTS WITH OTHERS

Meetings, communications and contacts that touch on antitrust matters present special challenges. A simple example will illustrate this. Suppose that competitors were to discuss their prices at a meeting or in a document, and that their prices increased shortly afterward. A jury might view this as evidence that their discussions led to an agreement on pricing, and thus violated the antitrust laws. In a case like that, the mere appearance of illegality – even when the parties may in fact have done nothing wrong – can cause serious problems. The guidelines that follow are designed to help you not only comply with the antitrust laws, but also avoid even the appearance of impropriety.

**Meetings.** AIA meetings regularly bring together members and others who are potential or actual competitors. It is therefore important that certain ground rules be followed to eliminate any suspicion that a particular meeting might be used for anticompetitive purposes:

- **Do** prepare an agenda, and have AIA counsel review it before the meeting.
- **Do** provide a copy of “The American Institute of Architects: Antitrust Compliance Guidelines” to every participant at the meeting.
Do have an AIA staff member attend the meeting.

Do invite legal counsel to attend if the meeting might involve matters having to do with competition.

Do follow the agenda at your meeting, with departures from the agenda only if counsel approves.

Do keep accurate minutes, and have counsel review them before they are put into final form and circulated.

Do not discuss any subjects that might raise antitrust concerns (including prices, market allocations, refusal to deal, and the like) unless you have received specific clearance from counsel in advance. If somebody begins discussing a sensitive subject, do not allow the discussion to continue. If the discussion does continue, do not allow the meeting to continue.

When members get together and talk before or after formal meetings, there should be no discussions that raise antitrust concerns even in such informal settings.

Records. When we talk about “records,” we are referring to any of the various communications people record in some tangible form every day -- in documents, e-mail, videotapes, audio recordings (such as voice mail), and the like. These “records” are sometimes inaccurate, often less precise or artful than we would like, and all too frequently subject to misinterpretation. You should prepare every record with the thought that it might some day have to be produced to government officials or plaintiffs’ lawyers, who will interpret your language in the worst possible way. The following guidelines may help you avoid problems in matters involving competition:

Do avoid creating unnecessary records.

Do use language that is clear, simple and accurate.

Do avoid language that might be misinterpreted to suggest that the AIA condones or is involved in any anticompetitive behavior.

Do, as much as possible, limit yourself to facts and avoid offering opinions.

Do not use joking or aggressive language (e.g., “let’s kill our competitors”).

Do not use language that might arouse suspicion (e.g., “For limited distribution” or “Destroy after reading”).

Do not speculate about the legality of specific conduct.
Do not violate the AIA’s record management policy when deciding how to handle, maintain or dispose of any record.

Do not hesitate to consult counsel about any non-routine correspondence requesting an AIA member to participate in projects or programs, submit data for such activities, or otherwise join other members in AIA actions.

Outside contacts. Whenever you have contact with outside parties on antitrust matters, always keep in mind that even completely innocent behavior may be misinterpreted. If a government representative, a private attorney or investigator, or any other outside person contacts you for information that might relate in some way to antitrust subjects, tell that person that you are not authorized to provide the information but will have an authorized person respond. You should then immediately contact legal counsel.

VI. RESPONSIBILITY FOR COMPLIANCE, MONITORING AND ENFORCEMENT

Responsibility for Antitrust Compliance. While the General Counsel’s Office will provide guidance on antitrust matters, furnish training as appropriate, and answer questions, it is ultimately your responsibility to assure that your actions with the AIA comply with the antitrust laws. You are expected to avoid all discussions and activities which may involve improper subject matter or procedures – and this includes such things as agreeing on prices, on how to allocate markets or customers, on placing limits on production, and on refusing to deal with certain suppliers or customers – and to avoid even the appearance of impropriety.

Communicating Antitrust Statement and Procedures. The General Counsel’s Office and AIA Human Resources will distribute a copy of these procedures to each AIA officer and employee. AIA Component Relations and AIA Membership Services will assist in providing copies of these procedures to AIA components and to members whose responsibilities with the Institute might require knowledge of the antitrust laws. You should promptly sign and return the acknowledgment in the attached form (Attachment A).

Communicating the AIA’s Antitrust Compliance Statement and Procedures. The General Counsel’s Office, in conjunction with AIA Human Resources and others, will make presentations as appropriate on compliance with the antitrust laws to the Institute’s employees and to AIA components and members to the extent their activities might bear on the AIA’s compliance with the antitrust laws. In addition, all AIA officers and employees and AIA members are encouraged to contact the General Counsel’s Office at any time with questions they may have concerning antitrust compliance.

Compliance Monitoring and Enforcement. The General Counsel’s Office and AIA Human Resources will monitor and audit AIA operations and activities as appropriate to help ensure compliance with these procedures and the antitrust laws in general. They will also promptly investigate any conduct that is reported or otherwise suspected to violate the antitrust laws. Any such violations may result in immediate disciplinary action, up to and including termination of membership or (for AIA employees) employment.
The AIA recognizes that its own employees are an important source of information about possible antitrust violations in connection with the AIA’s activities. It therefore requires that employees promptly report any suspected violations of the antitrust laws. Such reports may be made anonymously. Only persons with a need to know about such reports will be advised of them. Intimidating, retaliating against or imposing any form of retribution on any employee for reporting suspected violations of the antitrust laws may result in disciplinary action, including possible termination of membership or employment, as the case may be.

VII. CONCLUSION

If you have a question about whether any of the AIA’s operations or activities may violate the antitrust laws, contact the General Counsel’s Office. We look forward to working with you to assure that the AIA, its officers and employees, and its members strictly comply with both the letter and the spirit of those laws in all of our activities with the AIA.

The American Institute of Architects
General Counsel’s Office
1735 New York Avenue, N.W.
Washington, D.C.
202/626-7300
September 2002
THE AMERICAN INSTITUTE OF ARCHITECTS
ANTITRUST COMPLIANCE STATEMENT AND
PROCEDURES

ATTACHMENT A

I have received and read a copy of “The American Institute of Architects: Antitrust
Compliance Statement and Procedures,” and agree to comply with the guidance
shown there.

Signed: 

Name (printed): 

Date: 

Please sign and complete this form, and return it to AIA Human Resources.
Appendix G. Glossary of Antitrust Terms


In alphabetical order:

**Boycott**
n. (1880) 1. An action designed to achieve the social or economic isolation of an adversary, esp. by the concerted refusal to do business with it. The term derives from Captain Charles C. Boycott, an English landowner in famine-plagues Ireland of the 1870s, because of his ruthless treatment of Irish tenant farmers, the Irish Land League ostracized him; 2. A refusal to deal in one transaction. Under the Sherman Antitrust Act, even peaceful persuasion of a person to refrain from dealing with another can amount to a boycott; 3. The period during which the refusal to do business is in effect. Group Boycott, (1936) Antitrust. 1. Concerted refusal to deal; 2. A type of secondary boycott by two or more competitors who refuse to do business with one firm unless it refrains from doing business with an actual or potential competitor of the boycotters. A group boycott can violate Sherman Act and is analyzed under either the per se rule or the rule of reason, depending on the nature of the boycott.

**Commodity**
(14c) 1. An article of trade or commerce. The term embraces only tangible goods, such as products or merchandise, as distinguished from services; 2. An economic good, esp. a raw material or an agricultural product. A hard commodity is mined, such as aluminum, copper, lead, nickel, tin, and zinc. A soft commodity is a perishable commodity, as with most foodstuffs.

**Common Law**
n. [fr. Law French commun Ley “commons law”] (14c) 1. The body of law derived from judicial decisions, rather than from statutes or constitution. Cf. statutory law

**Competition**
n. (16c) The struggle for commercial advantage; the effort or action of two or more commercial interests to obtain the same business from third parties. Fair competition (17c) is open, equitable, and just competition between business competitors. Horizontal competition (1930) is competition between a seller and its competitors. The Sherman Antitrust Act prohibits unreasonable restraints on horizontal competition, such as price-fixing agreements between competitors. Perfect competition (1884) is a completely efficient market situation characterized by numerous buyers and sellers, a homogeneous product, perfect information for all parties, and complete freedom to move in and out of the market. A perfectly competitive market is one in which no single firm has influence on the price of what it sells. Perfect competition rarely if ever exists but antitrust scholars often use the concept as a standard for measuring market performance. Vertical competition (1954) is competition between participants at different levels of distribution, such as manufacturer and distributor.

**Dissent**
n. (16c) 1. A disagreement with a majority opinion, esp. among judges; 2. A withholding of assent or approval

**Market Power**
(1915) The ability to reduce output and raise prices above the competitive level - specif., above marginal cost - for a sustained period, and to make a profit by doing so. In antitrust law, a large amount of market power may constitute monopoly power.

“In economic terms, market power is the ability to raise prices without a total loss of sales, without market power, consumers shop around to find a rival offering a better deal”

**Minority Report (see dissent)**
Nonprofit Association
(1899) A group organized for a purpose other than to generate income or profit, such as scientific, religious, or educational organizations.

Per Se
adv. & adj. [Latin] (16c) 1. Of, in or by itself; standing alone, without reference to additional facts. This phrase denotes that something is being considered alone, not with other collected things; 2. As a matter of law.

Price-Fixing
(1889) 1. Price control; 2. Antitrust. The artificial setting or maintenance of prices at a certain level, contrary to the workings of the free market; an agreement between producers and sellers of a product to set prices at a high level. Price-fixing is usually per se illegal under antitrust law - also termed fixing prices. Horizontal Price-Fixing, (1935) Price-fixing among competitors on the same level, such as retailers throughout the industry. Vertical Price-Fixing, (1936) Price-fixing among parties in the same chain of distribution, such as manufacturers and retailers attempting to control an item’s resale price.

Prima Facie
adj. (15c) Sufficient to establish a fact or raise a presumption unless disproved or rebutted; based on what seems to be true on first examination, even though it may later be proved to be untrue. adv. [Latin] (15c) At first sight; on first appearance but subject to further evidence or information

Professional Association
(1837); 1. A group of professionals organized to practice their profession together, though not necessarily in corporate or partnership form; 2. A group of professionals organized for education, social activity, or lobbying, such as a bar association - abbr. P.A.

Rule of Conscious Parallelism
(1951) Antitrust. An act of two or more businesses in concentrated market intentionally engaging in monopolistic conduct without an actual agreement between players - also termed tacit collusion; oligopolistic price coordination.

Rule of Evidence
(14c) The body of law regulating the admissibility of what is offered as proof into the record of a legal proceeding - also termed law of evidence

Rule of Reason102
(1987) Antitrust. The judicial doctrine holding that a trade practice violated the Sherman Act only if the practice is an unreasonable restraint on trade, based on the totality of economic circumstances.

Tacit Collusion (see: rule of conscious parallelism)

Trade
n. (14c) The business of buying and selling or bartering goods or services; commerce

Tying Arrangements
(1953) Antitrust. A seller’s agreement to sell one product or service only if the buyer also buys a

102 As stated in the case report for National Society of Engineers v United States: “Unreasonableness under the Rule of Reason could be based either (1) on the nature or character of the contracts, or (2) on surrounding circumstances giving rise to the inference or presumption that they were intended to restrain trade and enhance prices.” [435 US 679] “One problem presented by the language of § 1 of the Sherman Act is that it cannot mean what it says. The statute says that “every” contract that restrains trade is unlawful. But, as Mr. Justice Brandeis noted, restraint is the very essence of every contract; read literally, § 1 would outlaw the entire body of private contract law.” [435 US 679]


In the case of Arizona v Maricopa County Medical Society, it was determined that “[o]nce experience with a particular kind of restraint enables the Court to predict with confidence that the rule of reason will condemn it, it has applied a conclusive presumption that the restraint is unreasonable.” [457 US 332]
different product or service; a seller's refusal to sell one product or service unless the buyer also buys a different product or service. The product or service that the buyer wants to buy is known as the tying product or tying service; the different product or service that the seller insists on selling is known as the tied product or tied service. Tying arrangements may be illegal under the Sherman or Clayton Acts if their effect is too anticompetitive - also termed tying agreement; tie-in; tie-in arrangement.
Appendix H. Bibliography

For a full list of research materials and references not mentioned in the report, please visit the research database accompanying this report at: https://drive.google.com/drive/u/1/folders/0B-Sc0KR7f1Flfpub09BUmt0NWJzTzhrbGV0YlFJSVJzdkE3RmNWNmFiSm5MVV9tOFFiT2s

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