

SD ASSOCIATION

ANTITRUST POLICY AND GUIDELINES

POLICY

The SDA's activities are a coordinated effort among competitors whose interest or objective involves the design, development or application of a next generation flash memory card with security methods that prevent unauthorized use or copying. These activities are subject to antitrust laws. Although this coordination is perfectly legal under U.S. antitrust laws, we want to make sure that no antitrust risks are created by the manner in which the SDA program is carried out. Accordingly, these guidelines may go somewhat beyond the prohibitions of the law, but that is done in the interest of safety.

The penalties for violating antitrust laws can be quite severe, including large fines and even imprisonment of individuals found guilty of illegal conduct. Contrary to the popular belief that recent administrations have relaxed antitrust enforcement, in the past ten years the Justice Department has recommended jail sentences for the majority of persons convicted of violating antitrust laws. Moreover, the U.S. Supreme Court recently has ruled that a trade association may be held legally responsible for the unauthorized, as well as authorized, acts of its members. Accordingly, every effort must be made to avoid even the appearance of impropriety.

LAWFUL ACTIVITIES

As a basic premise, the goals of the SDA are clearly lawful. The proposed activities, if properly conducted, will not be found to violate the antitrust laws because they will not have an adverse effect on the competitive market place.

The SDA may rely on the judgment of legal counsel who may be present at the SDA meetings to ensure that topics which may give an appearance of an agreement that would violate antitrust laws are not discussed at these meetings. However, the presence of counsel at a meeting should not invite probing to determine how far a discussion can proceed before it becomes apparent that it is improper and is cut off. Each member has the responsibility in the first instance to avoid raising improper subjects for discussion. This reminder has been prepared to ensure that participants in the SDA meetings are aware of this obligation.

UNLAWFUL ACTIVITIES

The most common violations of the antitrust laws are agreements among competitors to fix prices or allocate customers. As for the SDA, the most important thing to keep in mind is that its purpose is to define standards for, and promote market acceptance of, a next generation flash memory card technology

with security methods that prevent unauthorized use or copying and its applications. The SDA does not involve individual member's activities in the marketing of particular products. Accordingly, it is not the business of the SDA to consider or discuss matters relating to product development, marketing, purchasing or pricing decisions of individual companies.

COMPETITION

Nothing contained in these Antitrust Guidelines shall in any manner be deemed to prohibit or limit a Member from making, using or selling any competing product which does not embody any specification standard adopted by the SDA.

The Do's and Don'ts presented below highlight only the most basic antitrust principles. Participants in the SDA meetings should consult counsel in all cases involving specific situations, interpretations or advice.

DON'T

- I. IN FACT OR APPEARANCE, discuss or exchange information regarding:
 - A. Individual company current or projected prices, price changes, price differentials, markups, discounts, allowances, terms and conditions of sale, including credit terms, etc., or data that bear on prices, including profits, margins or cost.
 - B. Industry pricing policies, price levels, price changes, differentials, or the like.
 - C. Changes in industry production, capacity or inventories.
 - D. Individual company bids or intentions to bid for particular products, procedures for responding to bid invitations or specific contractual arrangements.
 - E. Plans of individual companies concerning the design, characteristics, production, distribution or marketing or introduction dates of particular products, including proposed territories or customers.
 - F. Matters relating to actual or potential individual suppliers that might have the effect of excluding them from any market or of influencing the business conduct of firms toward such suppliers or customers.
 - G. Individual company current or projected cost of procurement, development or manufacture of any product.
 - H. Individual company market shares for any product or for all products.

- II. Discuss or exchange information regarding the above matters during social gatherings incidental to the SDA-sanctioned meetings, even in jest.

DO

1. Adhere to prepared agendas for all SDA meetings.
2. Insist that meeting minutes be prepared and distributed to all participants, and object whenever meeting minutes do not accurately reflect the matters which transpired.
3. Understand the purposes and authority of each SDA committee or other group in which you participate.
4. Consult with the SDA's legal counsel or your company counsel on all antitrust questions related to SDA meetings.
5. Protest against any discussions or meetings which appear to violate the antitrust laws, disassociate yourself from any such discussions or activities, leave any meeting in which they continue and report the activity to the SDA Board so that similar conduct can be avoided in the future.

The SDA's policy is to discuss thoroughly with legal counsel any proposed programs or policy decisions before they are implemented. If any participant has any question as to the legality of a proposed course of action, the matter should be immediately referred to the SDA Board, who will discuss it with legal counsel. In this manner, the SDA can ensure continued pursuit of its legitimate objectives with maximum protection for its participants.