

Antitrust Laws and the SAWE

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We have all heard about big antitrust lawsuits. Apple, Google, Microsoft, and Samsung come to mind most recently. Even the NCAA, National Collegiate Athletic Association, is being scrutinized for dominating college sports. While these big names usually get all the press, antitrust laws apply to every organization and the SAWE is no exception. The intent of this article is to make people aware of the laws and how they affect an organization like us. Most of the press clippings about antitrust laws involve price-fixing or illegal collusion to control market share, but there are indeed some aspects of the laws that pertain to voluntary technical societies like ours. Therefore, it is in our best interests to make sure we understand the situations that lead to antitrust issues so that we take the necessary steps to avoid any violations. Bear in mind that this summary comes not from a lawyer, but an engineer. The lawyers, either those retained by the SAWE or those who represent our individual employers, are certainly more knowledgeable than us engineers. It is they who should be consulted if you see a situation that could involve antitrust issues. First, let me answer some questions you may have before I get to the part that affects us the most.



Image Source: Investopedia.com

What is antitrust regulation?

Antitrust law is a collection of federal and state laws which regulate the conduct of business organizations to promote fair competition for the public in general. Such organizations include everything from a small privately-held company to a large, publicly-held, multi-national corporation, to a voluntary technical society like the SAWE. The main statutes addressing antitrust are the Sherman Act of 1890, the Clayton Act of 1914, and the Federal Trade Commission Act of 1914. As you may recall from your US history classes in high school, these acts restrict the formation of cartels and prohibit other collusive practices regarded as being in restraint of trade. They also restrict mergers and acquisitions of organizations which could significantly lessen competition. Lastly, they prohibit the creation of a monopoly and the misuse of the power that can potentially exist in a monopoly. The laws were primarily enacted at a time when large manufacturing conglomerates were ushering in the era of "big business" and wielding excessive economic power over the marketplace to the detriment of the consumer. These laws give the U.S. Department of Justice the obligation to go to federal court to stop illegal behavior and to impose legal remedies or penalties on those who are found to have violated these statutes. This is not to say that there can be no conglomerates or monopolies. However, they cannot damage the economic environment of its competitors. Many states also have passed legislation protecting against unfair competition and imposing further penalties. Because the SAWE is incorporated in the state of California, the California Cartright Act and the California Unfair Practices Act may also apply to us.



ImageSource: justice.gov

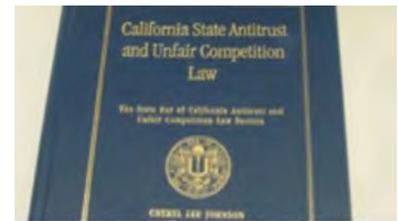
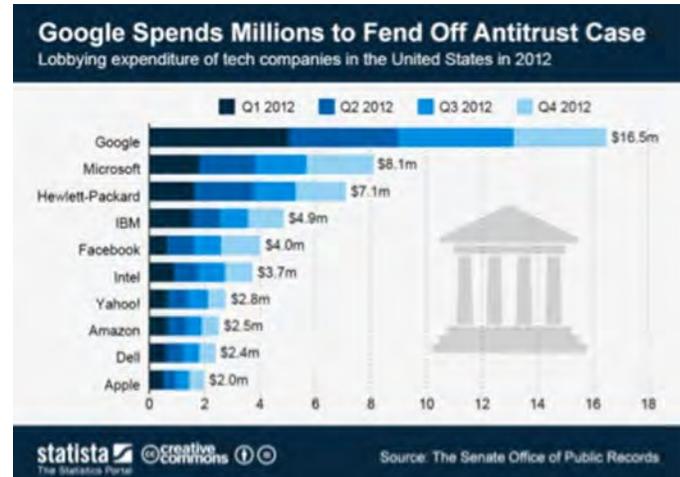


Image Source: lexisnexis.com

How do Antitrust Laws pertain to organizations like the SAWE?

The antitrust laws seek to restrict formal or informal agreements between competitors regarding price, production, distribution, or the nature of their products or services. Agreements can be merely unwritten understandings between key individuals who are in actual or potential competition with one another. Such agreements can be inferred from conduct, surrounding circumstances, notes, minutes, or articles that, when read together, support a claim that an agreement was reached. Such agreements can apply to competitors, their suppliers, or their customers and may be between two U.S. organizations or between a U.S. organization and a foreign company. Anything that can be considered to restrain fair competition in the marketplace constitutes antitrust.



The SAWE takes great pride in bringing together competitors, suppliers, customers, and Government regulators alike in a non-competitive, collaborative forum for the good of all members, their respective companies, and the profession in general. Our Standards and Practices Committee and its component industry committees are indeed founded on the free and open exchange of ideas for the benefit of all. While the SPC has no intent whatsoever to inhibit free trade, you have to recognize that all the elements are present in SAWE just as they are in any professional society. Because certain antitrust violations can be prosecuted as criminal felonies and penalties for those convicted of them can be severe, as well as the fact that government investigations and lawsuits can be very costly and highly disruptive to the organizations involved, even if found innocent, the best practice is to avoid any conduct that could possibly be construed as acting against fair trade interests. Officers, staff, and members of the SAWE alike must avoid even the appearance of questionable activities.

How do we avoid violations, or the appearance of such violations, of antitrust laws in the SAWE?

The first answer to this question is to make all SAWE members aware of the antitrust laws and their consequences. Hopefully, this Journal article will help with this. The next thing to do is formulate a policy that spells out our position on matters of antitrust and the steps we take to avoid antitrust violations. We should state, for the record, our understanding of the important issues and how we deal with them in an effective manner during our chapter meetings, our International conferences, our every day correspondence between SPC committees and their respective members, and even between any two or more members from different companies. The Executive Committee of the SAWE is well aware of this and will take action to formulate a policy for all of us to follow.

The following guidelines should be followed:

- Meetings should be based on written agendas and questionable topics not on the agenda should be avoided.
- There should be no “hallway” or “hospitality room” discussions of business matters. All meetings should be “on the record.”
- A standard antitrust reminder should be brought up at meetings or conferences, either read orally or summarized at the outset.
- Minutes should be prepared for retention, and approval as appropriate.
- If a member has any reservation concerning remarks or discussion at any meeting, either in person or by telecom, they should state their reservation to all. If there is any doubt of whether a subject is appropriate or not, the discussion should be tabled until SAWE executive officers or outside council can be consulted.

- Avoid discussions regarding the following subjects:
 - Current or future prices or discounts of products or services.
 - Conditions of sale, such as credit and payment terms, or delivery charges.
 - What constitutes a “fair profit level?”
 - Standardization or stabilization of prices.
 - Do not discuss pricing procedures or the pricing practices of any industry member.
 - Do not discuss who will serve specific customers, markets, or geographical areas.
 - Do not discuss whether or not to deal with a competitor, customer, or supplier.
 - Do not provide or solicit non-public marketing, product, or service plans.
 - Do not discuss or solicit non-public information concerning costs, profits, customers, business contracts, etc.
 - Do not state, or imply, that any single member or organization is being singled out for special treatment.
 - Do not, in any way, disparage non-member individuals or organizations.
 - If any survey or other benchmarking activity is conducted under the auspices of the SAWE, participants in the survey must be voluntary, there shall be at least five respondents providing data, no individual provider’s data shall constitute more than 25% of the total, results disseminated shall be sufficiently aggregated such that specific individual respondents cannot be identified by the recipient, the SAWE shall preserve the confidentiality of the original information collected, and the data shall be collected and analyzed by an independent party who did not furnish information.

The antitrust rules are not in place to prohibit or unnecessarily restrain our standards development activities, our training, any future certification programs, or joint collaboration on projects of benefit to general industry. In fact, our participation in the American National Standards Institute (ANSI) standards program goes a long way to ensuring that we are fully compliant. For example, our free and open membership policies and our posting of all SAWE standards for review and comment by all individuals and companies, regardless of whether members or not, is testimony to our compliance. As Chairman of the Standards and Practices Committee, this subject is a major concern to me. But, after looking into this subject, I am confident that we are in compliance with the regulations and that with proper diligence on the part of all members, we will continue to develop products and services to benefit our members, their respective organizations, and the profession of mass properties engineering. The executive officers and the Board of Directors of the SAWE are committed to our mission as well as compliance with all laws that affect us or our activities.

If you have any further concerns about antitrust issues, please do not hesitate to contact the legal expertise of your company or organization. They are much more experienced and knowledgeable about this subject than I, and they are there to help prevent violations by their employees and the organization they represent. If there are any special concerns or questions regarding this subject, please contact any of your officers of the SAWE for discussion at the next International Conference.