

Pacific West Fastener Association

Antitrust Law Briefing

Mark Alcorn, Alcorn Law Corporation

March 7, 2024

Introduction

General principles, no legal advice, fast pace
Ask questions any time
Please share what you know, your experience!

Basic Antitrust Law

What is an antitrust law violation?
Combinations, anti-competitive activities, monopolies
Associations are always at risk
What constitutes an antitrust law violation?
Difficult: Abstract, complex, completely fact dependent
Being competitive and acting in one's on self-interest is usually lawful
Unlevel playing field: Government need not prove actual conspiracy
No conspiracy is too small
Other countries, including China, have antitrust laws

General Business Practices

Agreeing on prices or terms of sale
Agreeing and dividing out regions/territories
Agreeing to stay out of specific markets
Agreeing to boycott
Agreeing on what to pay employees

Manufacturer imposed restrictions

Can a manufacturer require that you sell at MSRP?
Can a manufacturer limit the number of distributors of its products?
Can a manufacturer impose performance goals?

Distributor imposed restrictions

May a distributor impose restrictions on its customers?
Performance goals? Service requirements?
Price requirements such as MSRP? Inventory requirements?
Prohibit direct sales by the manufacturer?
Does a customer have a right to inspect manufacturer facility/processes?

Best Practices (in order of priority)

- #1. Do what is best for your company,
but without agreement or consultation with competitors
- #2. Use written contracts with explanations of restrictions
Legal review
- #3. Arbitration clauses with attorney's fees
- #4. Manage/minimize risk; avoid gray areas, if in doubt get legal input

Open Question and Answer