

# RESNET

*Residential Energy Services Network*

Setting the Standards for Quality

## **Residential Energy Services Network (RESNET) ANTITRUST POLICY**

The Residential Energy Services Network (RESNET) has two primary responsibilities:

- Setting the standards for the quality of rating services, and
- Support the growth of rating services infrastructure nationally

It is the policy of RESNET that in carrying out these activities the organization will not restrict fair and open competition and will not violate the provisions of anti-trust laws.

RESNET, conscious of the potential antitrust problems inherent in setting the standards for the quality of rating services, adopts a policy that RESNET "shall not directly or indirectly restrict free and lawful competition." To ensure strict compliance with the antitrust laws, the RESNET Board of Directors has adopted a RESNET Antitrust Policy for staff, directors, committees and its membership. These clearly defined statements of conduct must always be kept in mind, and all organization meetings and other activities shall be conducted in accordance therewith.

Section 1 of the Sherman Antitrust Act and Section 5 of the Federal Trade Commission Act prohibit "contracts, combinations or conspiracies in restraint of trade and unfair methods of competition in commerce...."

One of the clearest antitrust violations an organization can commit is an agreement by its members to set prices at a fixed level. Such an agreement is a per se violation of the antitrust laws, even if the prices set are reasonable or the ends sought are worthy. Similarly, terms and conditions of sale which affect the buyer should not be discussed. These include discounts, terms of service warranties and other individual policies followed in dealing with customers. Informal understandings and planned courses of action on these subjects by competitors also clearly are forbidden.

Administrative or disciplinary action against member companies or organizations, or the expulsion of members companies, may result in economic injury to the affected members and, thus, may constitute an illegal boycott or restraint of trade.

Therefore, these sensitive areas must be discussed in accordance with strictly defined guidelines and only in the presence of the executive director.

Frequently, an organization engages in the voluntary development of industry standards. Antitrust problems will arise if the standard developed is designed to advance the economic interests or operates as a marketing advantage for some members to the detriment of others.

Statistical reporting is another common organization sponsored activity. However, since some associations and their members have used these activities in the past to further price-fixing and monopolistic schemes, statistical reporting projects must be conducted with great care in order to conform with clearly defined rules regarding the collection and dispersal of confidential product information. Antitrust problems also may arise when organizations become involved in industry wide research and development programs. When pooling of results exists, organization sponsored joint research and development activities may injure competition by diluting the competitive pressures to innovate.

Another area of potential antitrust infraction involves organization sponsored efforts to petition government agencies for action which may have an adverse economic impact on some competing companies. A delicate balance always must be maintained between the First Amendment right to petition government and the antitrust laws' prohibition against restraint of trade. The First Amendment does not protect parties which seek to prod government agencies into imposing trade restrictions by misleading them or by engaging in other dishonest activities. Any effort designed to injure industry competitors clearly is prohibited.

The proper conduct of RESNET meetings requires an understanding and conscious awareness by all of antitrust implications. Your non-participation in the discussions pro and con may not protect you if, out of such discussions at a meeting you attend, any agreement in restraint of trade originates. However, no imputed unlawful purpose can arise if conscious independent and individual judgment is exercised and no illegal common course of action is pursued.

To assist in avoiding antitrust problems at RESNET meetings, a list of four DON'TS has been prepared. You should read and remember these four basic rules. BE ALERT AND KEEP INFORMED. Antitrust laws are wide ranging, complex, and subject to changing interpretation. Consult your company's lawyer or the RESNET executive director immediately if you have any questions about the legality of any proposed organization action.

## **RESNET ANTITRUST DON'TS**

**1. DON'T discuss the prices your company will charge customers.**

**2. DON'T discuss discounts, terms, or conditions of sale, warranty terms, profits or profit margins, shares of the market, bids or the intent to bid, rejection or termination of customers, sales territories or markets.**

**3. DON'T discuss administrative or disciplinary action by RESNET against a particular member, or enforcement of RESNET's Code of Ethics, in the absence of specific guidance.**

**4. DON'T propose or discuss any proposal or engage in any activity, which is intended to have the effect of producing an adverse economic impact on some competing companies.**