

**Following are some very important DON'TS when you participate in an industry credit group:**

- **DON'T** jointly determine to whom sales are to be made or to whom credit is to be extended or what those terms should be
- **DON'T** establish joint or uniform prices, terms or conditions under which sales will be made or credit extended
- **DON'T** create uniform or standardized freight rates
- **DON'T** limit production or establish quotas
- **DON'T** divide markets
- **DON'T** boycott or blacklist customers or suppliers
- **DON'T** plan any of the following with a competitor: prices; terms of credit or sale; profit margins; sales discounts or allowances; production costs and expenses; transportation rates; production or research and development; market areas or sources; product or packaging standardization
- **DON'T** exchange or collect information about prospective prices, credit policies, terms or conditions of sale or production costs or plans
- **DON'T** participate in any activity that would limit the exercise of free judgment by members of the management team of any company in the industry group
- **DON'T** act in concert with fellow members to effect any of the above acts before, during or after the meetings of the industry group
- **DON'T** receive the benefit of any illegal activity

*The information published in this booklet are only general statements of the law. For any particular questions concerning your company or its participation in an industry group, you should contact your company's legal counsel.*

**About NACM**

The National Association of Credit Management (NACM) and its network of Affiliated Associations are the leading resource for credit and financial management, providing information, products and services for effective business credit and accounts receivable management. NACM provides a full array of services from providing business credit reports and industry credit groups, commercial collection and adjustment services to publications and educational conferences, seminars, programs and professional credentialing.

**About Business Credit**

Business credit is the single largest source of business financing by volume, exceeding even bank loans. It is the credit extended between business and is the fuel that drives the engine of today's commercial economy. As companies struggle to maintain or expand their customer base in these challenging economic times, business credit risk management becomes the key to success. The role that the credit department plays within every company and the contribution that the credit management professionals make on a day-to-day basis are key to both the stability, growth and success of any business.



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# Antitrust Guide

for business  
credit  
professionals



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## Information is vital to making good decisions and the success of any business.

**Y**ou extend credit to customers based on information that you have about that customer. There are others who also are likely to extend credit to that same customer. Some may have information about that customer that you don't have. Neither you nor those in your industry want to enter into a business relationship with a customer who might want to perpetuate a fraud. Wouldn't it be helpful to pool information in order to develop a more complete "picture" of the business environment you work in? The National Association of Credit Management (NACM) offers the opportunity to do so through over 1,000 industry credit groups.

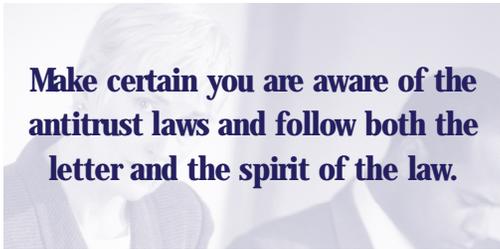
However, in order to protect yourself, your company and your fellow credit professionals when sharing business information, you need to make certain you are aware of the antitrust laws and follow both the letter and the spirit of the law.

The "grandfather" of all federal laws governing your conduct is the Sherman Act which prohibits "contracts, combinations and conspiracies in restraint of trade"; i.e., garden variety antitrust. This law mandates that any joint action that eliminates an element of competition from the marketplace is unlawful. Over the years, the "rule of reason" has evolved. This provides that not every act by "competitors" is a violation of the Sherman Act. Rather, only those that are deemed to be "unreasonable" or have an anti-competitive effect violate the Sherman Act. However, there are certain actions, called "per se" violations, that are considered restraint of trade regardless of the result to the market, participants or consumers, even if the alleged act has a positive result such as reducing consumer prices. Examples include price fixing, boycotting of competitors or divisions of markets.

Another body of law governing trade is the Clayton Act which declared certain other actions as unlawful if the effect is to lessen competition. These include:

- Sales (including leases) made on the condition that the customer not use or buy from a competitor
- Acquisitions of stock of other corporations that tend to create a monopoly
- Interlocking directorates (board of directors of different corporations that have a significant number of identical members)

Violation of the Clayton Act can lead to treble damages (three times the amount of the injury suffered in the marketplace by the aggrieved party) or an injunction stopping the illegal activity.



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Charging different prices for the same grade and quality of goods is a possible violation of the Robinson-Patman Act if doing so has the effect of lessening competition. This applies not only to the price terms but also to the credit terms. However, the Act does not apply to services. The goal is to protect small businesses against "predatory" acts by larger competitors. However, if there is a legitimate basis for price differences and these differences are set in good faith, there may not be a violation of the Robinson-Patman Act.

The Federal Trade Commission Act makes unlawful all "unfair methods of competition, and unfair or deceptive acts or practices in commerce."

The Commission, which jointly shares enforcement authority over antitrust actions with the U.S. Department of Justice, has authority to look into such matters as false advertising, deceptive branding and other types of deceptive acts.

### Following are some tips if you are involved in an Industry Trade Credit Group:

- Information you exchange must be current and be based upon factual experience
- The information must be accurate. Be sure to double check it, before sharing
- Information must be based upon completed transactions and not projected future expectations
- Participation in any statistical survey program must be voluntary, with interested parties making individual business decisions regarding participation
- Only provide the name of the delinquent debtor and the amount owed. Identify only your own delinquent customers and do not provide information relating to any other creditor to whom debt may be owed
- If a debtor has honest and legitimate reasons for not paying (e.g. a dispute over the quality of the goods), do not include it on the list of delinquent debtors
- Assist customers to overcome financial difficulties. Where appropriate participate on creditors' committees in state or federal insolvency proceedings
- Include the following statement on each list you provide:

The inclusion on this report of the name of any customer should NOT be deemed to be a recommendation or suggestion on the part of the \_\_\_\_\_ Credit Group, or of the \_\_\_\_\_ Association of Credit Management that further credit should be curtailed or denied. The extension of credit is a decision to be determined by each individual seller in accordance with his own judgment after appropriate investigation.
- Only discuss general trends in your industry or the economy generally
- Identify and take positions on legislation that has a direct impact on your industry group
- Engage in educational, research and public relations activities