New England Commission of Higher Education
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Antitrust Compliance Procedures

I. Purpose

The New England Commission on Higher Education (NECHE or the Commission) seeks to ensure that its Commission representatives observe high standards of professional and personal ethics in the conduct of their duties and responsibilities. The purpose of these procedures is to implement the *Antitrust Compliance Policy* which requires compliance with the antitrust laws of the United States.

These procedures are intended to help Commission representatives recognize the types of conduct that the antitrust laws of the United States address and to identify when they should seek further guidance. Commission representatives should carefully review these procedures and consult with their appropriate supervisor as provided below whenever there is any doubt about a particular issue.

II. Antitrust Principles

The Commission shall require that all Commission representatives act in accordance with their responsibilities to recognize and avoid or prevent situations that violate antitrust laws of the United States or that otherwise facilitate unreasonable restraints on competition or harm consumer welfare. The antitrust laws of the United States, broadly stated, prohibit cartels, anticompetitive agreements with competitors, anticompetitive dealings with customers or suppliers, monopolization and anticompetitive corporate transactions. Commission representatives shall avoid agreements or invitations to engage in any of the practices immediately referenced above. Failure to understand and comply with these laws places the Commission and its representatives at substantial legal risk, including criminal and civil penalties. Every Commission representative has the individual responsibility to recognize and avoid or prevent situations that violate the antitrust laws of the United States and the Commission's *Antitrust Compliance Policy.*

A. Commission representatives will understand and conduct activities in accordance with the antitrust compliance principles. Commission representatives:

1. Will not engage in conduct that would result in or otherwise facilitate an unreasonable restraint on competition or harm to consumer welfare, or that would constitute unfair competition;

2. Will not use NECHE to attempt to reach any type of agreement, whether express or informal, with competitors, those who may be viewed as competitors, or potential competitors;

3. Will not invite a competitor to collude or agree with a competitor to set fees or conditions of sale or purchase; divide the market by allocating either customers, suppliers, or territories; refuse to do business with a third party; set the quantity or quality of services provided; or exclude others from the market;

4. Will not exchange competitively sensitive information, which includes but is not limited to information regarding fees, compensation, prices, terms of purchase, specific contracts and business strategy, with competitors, those who may be viewed as competitors, or potential competitors;

5. Will not discuss fees, costs, bids, or other sensitive competitive matters;

6. Will not have contact with competitors that does not have a legitimate business purpose.

7. Will keep accurate notes of all meetings with competitors and ensure that the discussions are confined to predetermined legitimate business purposes.

8. Will not write or say anything that you would not want disclosed to government enforcement agencies or in a courtroom, including unqualified legal opinions and exaggerated or speculative claims;

9. Will carefully consider the language used in all internal and external communications and will not engage in communications, including the creation of documents or records, that could be misinterpreted as anti-competitive behavior, such as:

    a. Statements involving terms that may have legal significance under the antitrust laws of the United States, such as "market," "market share," "market power," "monopoly," "dominate," "barriers to entry," and "leverage;" or

    b. Statements exaggerating the Commission's strength or exaggerating the weakness of competitors;

10. Will not participate in internal or external meetings where discussions in violation of the Commission's *Antitrust Compliance Policy* may be taking place and will report those discussions according to these Procedures.

B. Commission representatives will avoid the appearance of impropriety under the antitrust laws of the United States and conduct activities such that the legitimacy of conduct can be explained.

C. Commission representatives will exercise independent judgment regarding competitive matters that is consistent with these procedures and the Commission's *Antitrust Compliance Policy*.

D. Commission representatives will consult with the President and Senior Vice President, or a member of Executive Committee with questions or concerns as to whether Commission activities are consistent with the antitrust laws of the United States or the Commission's *Antitrust Compliance Policy*. The President and Senior Vice President, or a member of the Executive Committee will consult with legal counsel on behalf of the

Commission as necessary to ensure the appropriate interpretation of the antitrust laws of the United States or further guidance related to Commission activities.

E. Commission members and Commission staff will certify their compliance with the Commission's *Antitrust Compliance Policy* on an annual basis through the submission of the *Antitrust Compliance Certification Statement*. Assigned peer evaluators will receive a copy of the Commission's Policy and Procedures as part of their training.

F. Commission representatives will report any violations or potential violations of the Commission's *Antitrust Compliance Policy* according to these Procedures.

III. Violations of Antitrust Laws

Violations of the antitrust laws of the United States could have significant consequences for the Commission and its representatives, including substantial fines and the imprisonment of officers.

A. Commission representatives who authorize or engage in acts in violation of the antitrust laws of the United States are personally subject to criminal fines and imprisonment.

B. Commission representatives who authorize or engage in acts in violation of the antitrust laws of the United States place the Commission at risk of expensive civil lawsuits with the potential for significant sums in damages as well as court orders prohibiting conduct that could disrupt the Commission's operations.

C. Commission representatives who authorize or engage in acts in violation of the antitrust laws of the United States are subject to disciplinary action up to and including termination, removal, and/or prohibition from participating in activities of the Commission.

IV. Procedures for Reporting Violations or Potential Violations

A. Commission representatives are encouraged to informally discuss questions or concerns about violations or potential violations of the antitrust laws of the United States with the President or, if staff, with supervisors.

1. If Commission representatives are not comfortable speaking informally with the President or, if staff, their supervisors, consultation can be made with the Senior Vice President.

2. If Commission representatives are not comfortable speaking with the President and the Senior Vice President, or, if staff, supervisors, the individual should report the alleged violation in writing to the Chair of the Executive Committee of the Commission.

B. The President and Senior Vice President, or supervisor will determine if an antitrust violation needs to be reported accordance with these procedures.

C. Commission representatives will report violations or potential violations of the antitrust laws of the United States in accordance with these procedures.

1. Anyone receiving a report of an antitrust violation is required to report it to the President.

2. Commission representatives should report promptly upon knowledge or discovery of the potential violation.

D. To report a potential violation of antitrust, it must be done in writing, which must be emailed to lschall@neche.org

1. Anonymous submissions will not be considered.

2. Confidentiality will be honored to the extent possible, consistent with the need to conduct an adequate investigation.

E. The President will monitor and verify receipt of all reports of antitrust violations within fourteen (14) calendar days.

F. The President will promptly notify the Executive Committee and the Finance Committee of any reports of antitrust violations received at a regularly scheduled meeting.

V. Procedures for the Review of Violations or Potential Violations

A. The President will serve as the Commission's designee for reports of violations or potential violations and holds the responsibility to process all reported complaints with the Chair of the Executive Committee of the Commission:

1. *If the report does not involve the Chair of the Executive Committee of the Commission:* The Chair will hold the discretion to determine who shall be assigned to investigate the report and hold the authority to hire independent counsel to assist with the investigation, if necessary. The results of all received and investigated reports of antitrust violations should be reported to the Finance Committee and Executive Committee.

2. *If the report involves the Chair of the Executive Committee of the Commission*: The Vice Chair will hold the discretion to determine who shall be assigned to investigate the report and hold the authority to hire independent counsel to assist with the investigation, if necessary. The results of all received and investigated reports of antitrust violations should be reported to the Finance Committee and Executive Committee.

B. The President will report annually to the Executive Committee certifying the requirements of the *Antitrust Compliance Policy and Procedures* have been met and shall include names of Commission representatives who appear not to be in compliance or have failed to submit the required certification.

VI. Timeframes

The Commission will act expeditiously in conducting its investigation, with the understanding that complex reports may require more time to complete. The status of the investigation will be reported to the Executive Committee until resolved to ensure expeditious completion of the investigation.

VII. Procedures for Corrective Action

The determination of the need for appropriate corrective action will be the responsibility of the party conducting the investigation of the report. Recommendations for corrective action, if warranted, will be reported to the Executive Committee during the investigation and implemented in the course of Commission business.

VIII. Definitions

The following definitions are used in this policy and/or procedures.

A. **Antitrust laws of the United States.** Four federal antitrust laws are the primary focus, including the Sherman Act, the Clayton Act, the Robinson-Patman Act, and the Federal Trade Commission Act. These laws generally prohibit the following conduct: (1) fixing fees, dues, prices, input costs or any term that affects prices to consumers; (2) coordinating conduct in connection with fees, dues, prices, or purchases; (3) rigging or coordinating bids; (4) fixing employee compensation or entering into "no poach" agreements with competitors; (5) exchanging competitively sensitive information with competitors, especially if such information facilitates coordinated conduct; (6) dividing markets (by geography or services); (7) boycotting or refusing to deal with actual or potential customers or suppliers; (8) agreeing with competitors on refusals to deal with other competitors; (9) limiting output or otherwise constraining capacity; (10) monopolization; (11) price discrimination; (12) inviting competitors to collude in an anticompetitive action; (13) arriving at any understanding with regard to anticompetitive action; (14) attempting or conspiring to engage in any of the above activities; (15) facilitating any of the above activities.

B. **Commission representative.** Any individual who represents or serves the Commission, including assigned peer evaluators, Commission staff, and Commissioners.

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