

ANTITRUST PRIMER

BUYER-SELLER AGREEMENTS

Most "vertical" agreements between buyers and sellers are legal.

- Contracts to buy and sell goods and services are almost always legal, as long as the items sold are themselves "legal". (No fraud, misrepresentation, theft, counterfeiting, tax evasion, illegal substances, etc.)
- The seller can impose reasonable obligations and restrictions on the buyer, including:
 - territorial restrictions (either a geographic territory or a requirement to sell only to a designated group, such as a "downline" group)
 - exclusive dealing requirements (such as Amway's requirement that DDs buy product only from Amway and other distributors buy product only from their upline)
 - customer service obligations, such as a requirement to provide customers with continuing information and support, warranty service, etc. (compare Amway's requirement to "supply, train and motivate.")
 - trademark and copyright restrictions to protect the seller's intellectual property.
- Sellers can legally decide the price at which they will sell to customers. Antitrust laws *encourage* buyers and sellers to bargain over price.
- Sellers cannot control the prices at which their customers resell to others. Antitrust laws *forbid* sellers to control the prices at which their customers resell to others. Resale price maintenance and policing of resale prices by the seller are prohibited by the 1979 FTC Order and the federal Sherman Act. (*Suggested* resale prices are legal as long as the seller does not enforce them.)
- Sellers cannot *force* buyers to purchase a product or service they don't want in order to get one they do. This is called a "tying arrangement," and when it involves forcing or coercion it can violate

the antitrust laws. *Voluntary* package deals and non-discriminatory volume discounts normally are legal.

COMPETITOR AGREEMENTS

Many "horizontal" agreements between competing buyers or sellers involve serious, potentially even criminal, antitrust issues.

- Buyers must not agree with their competitors on the prices they will pay or the terms of sale they will accept. Sellers cannot agree with their competitors on the prices they will charge or the terms on which they will sell. Such "horizontal" price-fixing agreements *always* violate the antitrust laws. *The fact that a seller may be involved in a buyers' agreement, or a buyer involved in a sellers' agreement, does not make such arrangements legal.* For example, if a group of competing buyers gets together to negotiate standard prices and terms with their common supplier, it is very likely an antitrust violation.
- Buyers and sellers must not agree with their competitors on customer or territorial assignments. Such "horizontal" customer and territorial allocation agreements *always* violate the antitrust laws. *The fact that a seller may be involved in a buyers' agreement, or a buyer involved in a sellers' agreement, does not make such arrangements legal.* For example, if a group of competing resellers agree on which customers each of them will serve, even if their supplier is involved in the agreement, the agreement almost certainly violates the antitrust laws.
- "Group boycotts" also violate antitrust law. A group of competing suppliers cannot agree to cut off one or more customers, nor is it legal for a group of competing customers to agree to cut off one or more suppliers. Each buyer or seller must make its own individual decision.

ANTITRUST GUIDELINES FOR THE BSM BUSINESS

- Any BSM line of sponsorship or other compensation system should be imposed unilaterally and "vertically" by the publisher or seller of BSM on its customers.
 - The originator of a BSM system could design and impose an Amway-like MLM contract on all of its customers, requiring them to impose a similar contract on their customers (the "daisy chain" approach).

- The originator of a BSM system could contract directly with every reseller of those BSM products and services. This would closely resemble the Amway system, in which every distributor contracts directly with Amway.
- Any distributor at any level in a BSM system could impose its own reasonable "vertical" distribution rules on its customers, following either the "daisy chain" approach or contracting directly with every downline reseller.
- Producers and resellers of BSM should not ask Amway to enforce their agreements about BSM distribution and sales. It would be a mistake for distributors to try to invoke Amway's rule against cross-line solicitation to solve problems in the BSM business. Amway is not the supplier of BSM resold in independent "systems"; it is a competitor, selling its own books, tapes and functions. Distributors who ask Amway to enforce lines of sponsorship in non-Amway BSM "systems" are in effect asking their competitor to help them allocate customers. If Amway complied with such a request, it would expose the requesting distributor as well as Amway to serious antitrust risks.
- Competing BSM sellers, including those involved in customer disputes, must not agree to divide up customers and revenue. While it may be appropriate to agree on how to separate BSM lines of sponsorship to resolve a dispute, any restrictions on distributors' ability to compete must be limited in duration and scope and reasonably related to some legitimate business purpose. Before any such arrangement is made, each distributor involved should seek independent legal advice.