

# AN FTC GUIDE TO DEALINGS WITH COMPETITORS

## OTHER AGREEMENTS AMONG COMPETITORS

**OTHER AGREEMENTS AMONG COMPETITORS** that are not inherently harmful to consumers are examined under a flexible “rule of reason” standard that attempts to determine their overall competitive effect. Here the focus is on the nature of the agreement, the harm that could arise, and whether the agreement is reasonably necessary to achieve procompetitive benefits. Below are a few examples of these types of dealings with competitors that may pose competitive problems.

### Agreements to restrict advertising

Truthful advertising is important in a free market system because it helps consumers compare the price and quality of products offered by competing suppliers. The FTC Act itself prohibits advertising that is false or deceptive, and the FTC vigorously enforces this standard to empower consumers to make choices in the marketplace. Competitor restrictions on the amount or content of advertising that is truthful and not deceptive may be illegal if evidence shows the restrictions have anticompetitive effects and lack reasonable business justifications.

**EXAMPLE:** The FTC challenged a professional code adopted by a national association of arbitrators that banned virtually all forms of advertising and soliciting clients. In a consent agreement with that organization, the rules were changed so that individual members were not barred from advertising truthful information about their prices and services.

### Codes of ethics

The antitrust laws do not prohibit professional associations from adopting reasonable ethical codes designed to protect the public. Such self-regulatory activity serves legitimate purposes, and in most cases can be expected to benefit, rather than to

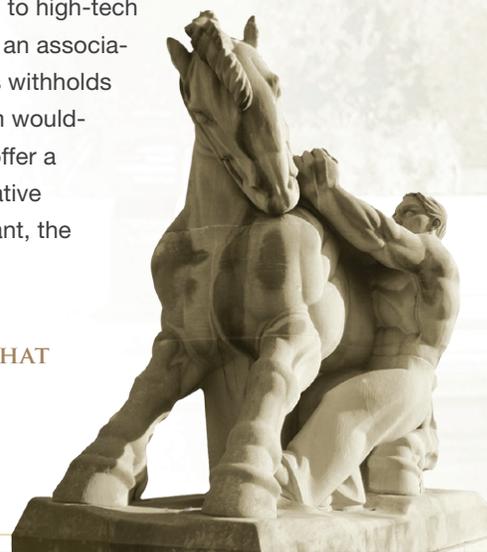
injure, competition or consumers. In some instances, however, ethical rules may be unlawful if they unreasonably restrict the ways professionals may compete. For example, a mandatory code of ethics that prevents members from competing on the basis of price or on terms other than those developed by the trade group can be an unreasonable restraint on competition.

**EXAMPLE:** The FTC challenged an organization of store planners that sought to prevent its members from offering free or discounted design or planning services. The group’s mandatory code of ethics discouraged price competition among the planners to the detriment of consumers.

### Exclusive member benefits

Business associations made up of competitors can offer their members important services and benefits that improve efficiency and reduce costs. These services and benefits can range from general industry promotion to high-tech support. But when an association of competitors withholds these benefits from would-be members that offer a competitive alternative that consumers want, the

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restriction may harm competition and keep prices high. This problem only occurs when members of the association have a significant market presence and it is difficult for non-members to compete without access to association-sponsored benefits.

**EXAMPLE:** Several antitrust cases have challenged realtor board rules that restricted access to Multiple Listing Services (MLS) for advertising homes for sale. The MLS system of combining the home listings of many brokers has substantial benefits for home buyers and sellers. The initial cases invalidated realtor board membership rules that excluded certain brokers from the MLS because access to the MLS was considered key to marketing homes. More recently, FTC enforcement actions have challenged MLS policies that permit access but more subtly disfavor certain types of brokerage arrangements that offer consumers a low-cost alternative to the more traditional, full-service listing agreement. For instance, some brokers offer a limited service model, listing a home on the local MLS for a fee while handing off other aspects of the sale to the seller. The FTC has challenged the rules of several MLS organizations that excluded these brokers from popular home sale web sites. These rules limited the ways in which brokers could conduct their business and denied home sellers the benefit of having different types of listings.