



There is a New Antitrust, You Need to See How It Applies to Your Association

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Antitrust Law 101 teaches us that the antitrust laws are designed to protect the consumer by outlawing unreasonable restraints on trade and unfair and deceptive trade practices. Association executives know about the basic antitrust laws. Association executives and association lawyers have applied these laws to various industry associations and professional societies for decades and know exactly how the laws apply to their particular organization. So, what is new?

What is new is that the competition model that defined your industry or profession a decade ago has either fallen by the wayside or is about to fall by the wayside. The competition model that formed the basis of your prior antitrust analysis must be redefined to focus on the reality of today's competition.

Ten years ago, competition in the retail market could be viewed as competition between big box stores such as Macy's, Lord and Taylor's and Bloomingdales. Today Amazon is dominating the market. In other U.S. markets, control has moved from U.S. national companies to international companies. As an example, in the motion picture theatre industry, the largest U.S. theatre chain is owned by a Chinese company and the second largest theatre chain has agreed to be acquired by a UK company.

This change in the competitive picture is epitomized in the health care industry. Increased consolidation on both horizontal and vertical levels is reported on a daily basis. And physicians now have to accept that widespread use of telemedicine which will revolutionize the practice of medicine is just around the corner.

Association executives need to consider how the changes in the markets in which their industry or profession competes relates to how the antitrust laws apply to new industry or professional competitive practices. In many cases there will be a need to redefine what constitutes an unreasonable restraint on trade or an unfair or deceptive trade practice. There will also be a need to update the association's antitrust compliance program. It is time to take a new look on how the antitrust laws affect your organization.

If you need help revising or updating your association's antitrust compliance program, contact Steve Fellman at sfellman@gkglaw.com.