



**Antitrust Compliance Guidelines and Policy
for DirectTrust.org, Inc.**

Version 1.0 June 8, 2015
Accepted by DirectTrust.org Board of Directors on June 10, 2015

Antitrust Compliance Guidelines and Policy for DirectTrust.org, Inc.

It is the policy of DirectTrust.org, Inc. ("DirectTrust"), that the organization, its officers, directors and employees, and its membership shall comply with the following Antitrust Compliance Policy and Guidelines. Additionally, members of the Board of Directors shall review this Antitrust Compliance Policy and Guidelines at least annually, and acknowledge their review and compliance on the form attached hereto. DirectTrust is organized as a non-profit, competitively neutral, self-regulatory entity created by and for Direct community participants. Our goal is to develop, promote and, as necessary, help enforce the rules and best practices necessary to maintain security and trust within the Direct community, and to foster widespread public confidence in the Directed exchange of health information.

ANTITRUST COMPLIANCE POLICY United States antitrust laws are founded on the belief that the public interest is best served by vigorous competition and that the public interest, as well as the national economy, would suffer from agreement or collusion among competitors. Penalties that may be imposed under the antitrust laws include three times the damage caused by the illegal act and in certain cases imprisonment for the individuals involved in the violation. **It is the policy of DirectTrust to conduct its operations in strict compliance with the antitrust laws of the United States and of the states in which it operates, and to require its members, when participating in DirectTrust, to do the same.**

ANTITRUST GUIDELINES In all its pricing, competitive, membership, marketing, standards and accrediting decisions DirectTrust and its members shall act independently, and not in agreement or collusion with others. DirectTrust shall not share with its competitors, nor shall its members who are competitors share with each other, information regarding costs, pricing, customers, or marketing, except as is publicly available. **Deliberate non-compliance with these Guidelines or involvement in violations of the antitrust laws are grounds for discipline by or dismissal from DirectTrust as an officer, Director, employee or member.**

GUIDELINES SUMMARY

These Guidelines discuss the areas where antitrust issues typically may arise in the context of trade association activities. Stated most simply, the following rules express the essence of these Guidelines:

- **Do not fix prices – that is, avoid any agreement (written, verbal, or inferred from conduct) among competitors that raises, lowers, or stabilizes prices or competitive terms.**
- **Do not enter into agreements with competitors on the type, quality, or quantity of services offered, or allocating customers, services, or market areas.**
- **Do not enter into agreements that have the effect of excluding others from competing with DirectTrust, its members, or the HISPs, CAs, and RAs accredited by DirectTrust.**
- **Do not exchange information with competing organizations or among members on costs, pricing, customers, or marketing.**
- **Do not engage in joint ventures or joint operations without consulting with and getting the approval of the Antitrust Compliance Officer.**
- **Do not use permitted membership activities, accreditation standards, or joint ventures as a cover or means to evade compliance with the antitrust laws or these Guidelines.**
- **Do not adopt standards or accreditation or other requirements that are not necessary to ensuring DirectTrust’s legitimate, competitively neutral business objectives or have the effect of unreasonably excluding others from competing with, participating in, or becoming members of DirectTrust, or competing with DirectTrust members.**

ANTITRUST COMPLIANCE OFFICER The DirectTrust Antitrust Compliance Officer is responsible for assisting DirectTrust and its members to comply with the Antitrust Compliance Policy and Guidelines. All questions or issues concerning compliance with the antitrust laws or these Guidelines should be addressed to and reviewed by the Antitrust Compliance Officer. Since the exact requirements for compliance with the antitrust laws may differ with only small changes in the underlying facts, each time the possibility of agreement or exchange of information with a competitor concerning pricing, standards, or operations arises, antitrust compliance advice should be obtained from the Antitrust Compliance Officer anew. No other person or office within DirectTrust has the authority to give advice on the applicability of the antitrust laws or to authorize any deviation from these Guidelines. Unless otherwise designated by the Board of Directors, the President and CEO shall serve as Antitrust Compliance Officer.

IMPLEMENTATION & ADVICE The Antitrust Compliance Officer shall report any concerns regarding compliance with the Antitrust Compliance Policy and Guidelines to the Board of Directors. In any situation where the application of the Guidelines is unclear or the situation otherwise indicates that further analysis or advice may be necessary, the Antitrust Compliance Officer shall recommend and the Board of Directors shall seek further advice of counsel as may be reasonable or necessary. Any DirectTrust officer, director, employee or member who is requested to engage in conduct that may violate, or who has knowledge of a violation of, these Guidelines should report the request or violation to the Antitrust Compliance Officer.

DISSEMINATION & ACKNOWLEDGEMENT The Antitrust Compliance Officer shall ensure that, in addition to the Board of Directors, every DirectTrust officer, employee, member volunteer and agent who deals with pricing, standards or other competitive functions on behalf of DirectTrust, and who may be in a position to engage in activities that might violate the antitrust laws, is made aware of DirectTrust's Antitrust Compliance Policy and Guidelines and signs an acknowledgement that the officer, employee, member volunteer and agent has been informed of DirectTrust's Antitrust Compliance Policy and Guidelines and will abide by them (which may be done through a shortened form such as attached as Exhibit A).

ABOUT THE ANTITRUST LAWS There are four principal U.S. antitrust laws: the Sherman Antitrust Act; the Clayton Antitrust Act; the Robinson Patman Act; and a part of the Federal Trade Commission Act. There are also state antitrust, business and competition laws.

Principally, the **Sherman Act** forbids contracts, combinations and conspiracies in restraint of trade and monopolization or attempts to monopolize. Forbidden agreements in restraint of trade (which require at least two independent actors) include price fixing, agreements affecting price, customer allocation or territorial divisions of markets, concerted refusals to deal and group boycotts (joint agreements not to do business with a third party), tying arrangements (requiring a purchaser to buy one product as a condition of buying another product from the same seller), and reciprocal dealing (agreeing to make purchases from suppliers who purchase from you). Monopolization involves using market power to charge prices above those that would prevail in a competitive market, or attempting to obtain the market power (or market share) to be able to do so.

The **Clayton Act** regulates mergers and certain overlapping directorships, but most notably adds a private cause of action (the right to bring a federal antitrust suit for treble damages plus attorneys' fees) for anyone one injured in their business or property by reason of anything forbidden in the antitrust laws, principally violations of the Sherman Act's prohibitions of conspiracies in restraint of trade and monopolization.

The **Robinson Patman Act** forbids price discrimination, the charging of substantially different prices by one seller to two different buyers at or about the same time for commodities of like grade and quality where the price differential causes an impact on competition between the two buyers or their customers. (The **Hart-Scott Rodino Act**, requires notification to the government prior to mergers or acquisitions generally valued in excess of approximately \$76 million.)

The **Federal Trade Commission Act** forbids unfair methods of competition and deceptive trade practices and allows the FTC, an independent federal agency, to bring enforcement actions for violations of the antitrust laws. (The Department of Justice, U.S. Attorney's Offices, state Attorneys Generals as well as private parties may also bring antitrust actions.)

State Antitrust Laws generally prohibits the same activities as forbidden under the Sherman Act.

THE ANTITRUST LAWS SERVE AN IMPORTANT PUBLIC PURPOSE The federal and state antitrust laws prohibit agreements, combinations, and conspiracies in restraint of trade, to ensure a level competitive playing field and properly functioning markets for the benefit of both competitors and consumers. Because DirectTrust, as a trade association, is by definition a combination of competitors and potential competitors, one element of a possible antitrust violation is inherent. Members and Directors of DirectTrust must be vigilant in complying with the antitrust laws.

DIRECTTRUST IS SUBJECT TO THE ANTITRUST LAWS That DirectTrust is a non-profit organization, or is involved in a public purpose, does not generally exempt it from the antitrust laws. That an agreement with a competitor may at the time seem to the individual involved to be in the immediate financial interest of the organization, may seem to facilitate the providing services, or may seem to have only a small economic impact on others does not render the agreement immune from the antitrust laws or compliance with these Guidelines. Many governmental agencies, as well as private parties, have the right to bring suits to enforce the antitrust laws. DirectTrust, and all employees, officers, agents, affiliates and members of DirectTrust, should consider themselves bound by the antitrust laws and these Guidelines, and must not engage in any action that has the potential to violate the antitrust laws without first seeking the specific advice of the Antitrust Compliance Officer.

ANTITRUST COMPLIANCE GUIDELINES

DO NOT FIX PRICES Price fixing is an agreement between competitors to set the price for a service charged to a consumer. Price fixing is per se illegal and is one of the areas of the antitrust laws that can be expected to result in criminal prosecution of the individuals involved. It is illegal to agree to set minimum prices, maximum prices, or a range of prices. All pricing decisions shall be made independently by DirectTrust, or in bargaining with its customers.

AGREEMENTS ON THE TYPE, QUALITY OR QUANTITY OF SERVICES OFFERED are considered price fixing. All decisions on quantity or quality of services shall be made independently by DirectTrust. Each separate service offered by DirectTrust must generally be independently priced and available, to avoid possible tying arrangements.

DO NOT EXCHANGE INFORMATION ON PRICING with competitors. Although DirectTrust may consider what it knows, or can learn from publicly available sources, about a competitor's pricing in setting its own prices, it may not agree to exchange even independently set price information with its competitors. Do not exchange information on the type, quality or quantity of services offered (do not supply such information to, or request such information from, a competitor even if there is no agreement on exchange).

DO NOT AGREE TO ALLOCATE CUSTOMERS DirectTrust shall not agree with any competitor to not compete to service any group of potential customers or any particular services or geographic areas. There may be customers and services DirectTrust is less interested or less able to service, but it must not directly or tacitly agree not to try to service those customers or areas. Any such allocation is considered a cartel agreement and may result in criminal prosecution for those involved in the violation.

JOINT VENTURES WITH COMPETITORS should generally be avoided. Joint ventures may be engaged in only upon prior notice to and approval by the Antitrust Compliance Officer. When DirectTrust, after review by the Antitrust Compliance Officer, participates in a joint venture, care should be taken not use the joint operation as an indirect or inadvertent means for agreeing on or coordinating DirectTrust's own pricing and operation decisions.

DO NOT ENTER INTO AGREEMENTS TO EXCLUDE OTHERS from providing services similar to those provided by DirectTrust, its members, or customers. Although DirectTrust is not required to do business with any customer or supplier it chooses not to (other than not discriminating on the basis of race, religion, handicap status and other protected criteria), it may not agree with competitors or others not to do business with third parties. Arrangements that have the effect of excluding others, or an agreement or arrangement that limits the ability of others to compete with another party, are also forbidden. DirectTrust may, for bona fide medical reasons, set minimum qualifications for persons or companies it does business with; these minimum qualifications must be pre-set, able to be independently applied, and generally not have any unnecessary economic component.

AVOID EXCLUSIVE DEALING AGREEMENTS Agreements that DirectTrust will do all of a certain type of business with only one or one group of suppliers will generally raise antitrust concerns. Only the Antitrust Compliance Officer has the authority to authorize exclusive contracts, agreements or arrangements. It is permissible to make all purchases from a single source if at the time of each purchase such decision appears to be in DirectTrust's own interests. Also, do not engage in reciprocal dealing (agreeing to make purchases from suppliers who agree to purchase from or otherwise do business with DirectTrust or its members).

DIFFERENTIAL PRICING The DirectTrust is generally required to charge the same price (and offer the same terms) for identical services to all similarly situated buyers or payers of those services. This is especially important where the buyers or payers are competitors with each other, and generally any price differential must be based on differences in the costs of providing the service. Before DirectTrust agrees to charge differential rates for identical services, approval must be sought and received from the Antitrust Compliance Officer.

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Exhibit A

The undersigned acknowledges receipt and review of the DirectTrust Antitrust Compliance Policy and Guidelines, and agrees to consult the DirectTrust Antitrust Compliance Officer as necessary and to comply with the antitrust laws and DirectTrust's Guidelines including, but not limited to, the following:

- Do not fix prices – that is, avoid any agreement (written, verbal, or inferred from conduct) among competitors that raises, lowers, or stabilizes prices or competitive terms.**
- Do not enter into agreements with competitors on the type, quality, or quantity of services offered, or allocating customers, services, or market areas.**
- Do not enter into agreements that have the effect of excluding others from competing with DirectTrust, its members, or the HISPs, CAs, and RAs accredited by DirectTrust.**
- Do not exchange information with competing organizations or among members on costs, pricing, customers, or marketing.**
- Do not engage in joint ventures or joint operations without consulting with and getting the approval of the Antitrust Compliance Officer.**
- Do not use permitted membership activities, accreditation standards, or joint ventures as a cover or means to evade compliance with the antitrust laws or these Guidelines.**
- Do not adopt standards or accreditation or other requirements that are not necessary to ensuring DirectTrust's legitimate, competitively neutral business objectives or have the effect of unreasonably excluding others from competing with, participating in, or becoming members of DirectTrust, or competing with DirectTrust members.**

I acknowledge that I received, understand, and will comply with the above Antitrust Compliance Guidelines and Policy.

Signature: _____ Name: _____ Date: _____