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ANTITRUST PRESENTATION

As has just been mentioned, I joined Lorillard eight months ago. Among the duties I took on at that time was that of monitoring our Antitrust Compliance Program and that is what I would like to talk about today. I was impressed with the program already in place when I arrived at Lorillard. Obviously a lot of thought went into it. We have the Card - which is the list of do's and don'ts regarding Antitrust. We have the quarterly bulletins, which lend a little perspective to the rules. Most of all, however, I was impressed with the level of awareness most of you demonstrate. Not only about the rules themselves, but about the stakes involved.

Since you're all so aware of the rules, I will concentrate on only two points. The first is attitude and the second is appearance.

Attitude

1. Many businessmen today are under the impression that antitrust laws are not being enforced very rigorously, and that, therefore, compliance can be "back-burnered." This is really not true, and a misinterpretation of what's going on.

   Although certain cases have come down recently making certain violations more difficult to prove, the basic prohibitions are all still in place. In fact, as I'll show you, the stakes are now even higher.

   First, let me quote the nation's highest antitrust enforcement officer:

   > "No matter what its guise, cartel behavior constitutes no more than fraud and theft from consumers. Price fixing. . .and all other variants of cartel behavior will be aggressively investigated and prosecuted. No industry is exempt from criminal enforcement. The Department of Justice fully endorses increased penalties for convicted antitrust felons." (1990)
   >
   > - James Rill,
   > United States Assistant Attorney General and head of the Antitrust Division of the U.S. Department of Justice.

The increased penalties he's talking about are those put into effect by the Antitrust Improvements Act of 1990, which increased fines for convicted individuals to $350,000 and Corporations to $10 million. However, the possible fines are now even higher than this.

Effective November 1, 1991, corporate fines levied for violations of federal criminal law (including the antitrust laws) became subject to the new Federal Sentencing Guidelines. Under these new Guidelines, convicted corporations could face fines up to $290 million.

Just a note on how the guidelines work. Depending upon the particular offense, the convicted corporation gets a base fine. This fine is then increased or decreased depending upon several mitigating and aggravating factors. The most important of these is whether the corporation had in place an otherwise effective compliance program designed to prevent violations.

With a program in place, the base fine can be reduced by up to 60 percent. On the other hand, the absence of such a program could result in the base fine being increased by over 300 percent.

Thus, an antitrust compliance program now provides a two-fold benefit - helping to prevent violations in the first place, but also helping to minimize fines should a corporation nevertheless be convicted.

So, far from being a back-burner issue, antitrust compliance is now more crucial than ever.

The second point I'd like to discuss is

2) Evidence and Appearance.

We all know the rules:

o **Cannot** discuss the following in the presence of competitors:

- prices
- costs
- market shares
- production levels
- competition, profits or the market generally
- territories
- terms of sales
- direct accounts
- credit decisions
- dealing with suppliers/ customers

- o **Cannot** discuss with a customer:

  - resale prices
  - choices of retail customers

- o **Cannot** indicate to a supplier that our purchases from him are conditioned upon:

  - his buying from us or/another Loews company
  - his selling/not selling to any other company

- o **Remember** decision of whom to put on direct are always to be independently made.

- o **Remember** we must treat our customers fairly and on a proportionally equal basis.

I am sure we all operate with these rules in mind; BUT:

Do we also keep in mind that innocent acts, conversation and writings might appear to be a violation or might look like evidence of a violation? **The point is that innocent people get sued too, and lawyers don't charge less just because the client happens to be innocent.**

Examples:

1. Suppose you're attending a trade convention and you're sharing small talk with two or your counterparts, one from Philip Morris and the other from Reynolds. Out of nowhere, the Philip Morris guy says to you "You'll be moving soon on prices, right?" You're caught off guard, a bit shocked and you sort of clear your throat and say, "yeah, I guess." The Reynolds guy says nothing. Let's say three weeks later, the prices do go up. Let's also say that some very angry wholesaler who's on the brink of bankruptcy also overheard your conversation and complains to the justice department that his suppliers are conspiring to raise prices. I'm not making this up, this is how these things start. The FTC even has a toll-free hotline for complaints like these. If I'm the ruthless young prosecutor in the case, guess what I'm going to do. Can anyone tell me?

I'm going to indict the three of you, but I'm going to give the Reynolds guy an offer he can't refuse. After I have him arrested and booked, I'll offer him immunity - guarantee him no jail time or penalties. All he has to do is testify against you and the Philip Morris guy. Any bets here on what his answer will be? The only good news is you'll have plenty of time on the unemployment line to think about what your new career is going to be.

- **The Point:** An informal conversation between sales people from competitive companies that strays even a bit, looks to all the world like an intentional exchange. Price fixing. And an agreement can be inferred.

2. Another example. Let's say someone in your department gets his hands on something really interesting. It's an internal Brown & Williamson memo outlining their entire promotional plan for next year. (I won't even deal with how he got it). Tucked in the back is a list of suppliers that B&W has determined are undesirable for one reason or another. Most of the blacklisted suppliers you've cut off too. Trouble is, everyone else has cut them off, probably because they are undesirable. But undesirable people have lawyers too, and so one of them sues, perhaps just to get even with the customers who cut him off. If I'm his unprincipled, money-hungry lawyer, can anyone guess what I'm going to do?

   I'm going to subpoena all your files, your notes, your calendars, your phone records and anything else I can think of. And guess what I'm going to find. A B&W memo. In Lorillard's files. How chummy. And when I show Arthur Stevens what I found, do you know what he's going to say? He's going to say, "Andrew, start writing the checks." Of course, there may be one less paycheck to write.

- **The Point:** A competitive document in our files, containing information that no real competitor would share, with no legend on it, looks to all the world like a communication regarding the substance (in my example, a concerted refusal to deal) and an agreement can be inferred.

Your responsibility is three-fold:

1) Know and abide by the policy set out in the Card.

2) Remain as innocent in appearance as in word and deed.

3) If in doubt <u>any</u> doubt), then ask.

Thank you

TOTAL RUNNING TIME: TEN MINUTES