PREFACE

The desirability of publishing an *Antitrust and Associations Handbook* was noted several years ago by the leadership of what was then known as the Trade Associations Committee of the Section of Antitrust Law. The Section’s 1996 practice guide entitled *Antitrust & Trade Associations* had its origins in a collection of papers presented at a Section program and was not conceived as an integrated work. Despite its high quality and great utility, the 1996 publication was incomplete in some respects. Moreover, there have been significant developments in a number of key areas in the intervening years. Nevertheless, what was said in the *Preface* to the 1996 book remains true today:

Significant segments of American business and professions are represented by trade and professional associations. Associations increasingly serve as the focal point of change as the United States economy shifts from a national to a global market, and new technologies emerge that enable industries and professions to adapt rapidly to these changing market conditions. To meet these challenges, trade and professional associations have moved from a reactive role to one of leadership. Associations are setting product standards, certifying the expertise of professionals, and actively opposing or promoting new legislative and regulatory initiatives.

The potential procompetitive benefits of trade and professional associations are as apparent today as they were in 1996. It is also true, however, that in 2009 as in 1996 association activities raise potential antitrust risks. All practitioners are familiar with Adam Smith’s comment about the inevitable tendency of competitors, when brought together in one place, to conspire against the public good, and recent international cartel cases provide sobering evidence that Smith’s warning, though perhaps overstated, cannot be dismissed.

One of the challenges in preparing this *Handbook* is that the major policy and case law developments in this area in recent years have occurred in a variety of contexts that are, at least in some respects, unlike the classic trade association. Those contexts include:
Professional associations, such as those in medicine, dentistry, law, and engineering, whose members typically are individual professionals rather than companies. Much of the case law in this area involves ethical codes.

Standard-setting organizations, which increasingly are technical standard-setting bodies that exist outside of traditional industry trade associations. Notably, many of the recent antitrust developments in this area have not involved allegations of industry-wide misconduct but instead have focused on single-firm conduct (e.g., a firm’s alleged misconduct in the standard-setting process) or efforts by one segment of an industry to gain an economic advantage over rivals through questionable means.

Various other forms of competitor collaborations, such as joint purchasing or joint selling alliances and R&D joint ventures. Included in this category are physician specialty groups and real estate multiple listing services. These types of collaborations generally do not operate along the lines of traditional trade associations.

Sports leagues, which differ from trade associations in fundamental respects, the most important being that a sports league, unlike a trade association, provides the business and operating structure through which the members conduct their core business.

Developments in all of these areas are covered throughout this Handbook; moreover, with the exception of sports leagues, each of the above topics is treated in depth in specific chapters. Chapter VII treats professional codes of ethics and similar practices; Chapter VIII is devoted to standards-development organizations, and Chapter IX discusses other forms of competitor collaborations. Sports leagues involve a range of unique considerations that cannot thoroughly be covered in this Handbook due to space limitations. While relevant precedents involving sports leagues are cited and discussed throughout, for more in-depth treatment of the antitrust issues they raise please see Antitrust Law Developments (6th), particularly at pages 119-22 and 1452-57.

Appropriately for a publication on this subject, the Handbook is a collaborative effort among many individuals who generously contributed their time and expertise. This publication would not have been possible without the efforts of the following individuals who drafted, researched,
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