

Operational Guidelines for  
the American Antitrust Institute's Amicus Program

*Goals and Criteria*

The purpose of AAI's amicus program is to positively influence the development of competition law in the courts and to advance the interests of consumers. As a general rule, AAI's amicus program focuses on legal rulings that may have widespread impact on competition policy. The effect on consumers in a particular case is a consideration, although our role is not primarily to argue about the parties' evidence in a case.

The AAI is most likely to get involved as amicus curiae in cases in the United States Supreme Court, the federal appeals courts, or state supreme courts. We are unlikely to get involved at the trial court level unless the legal issues are well defined and particularly significant or novel, or the effect on consumers is pronounced.

The principal criteria for amicus participation are:

1. The significance of the legal issue to the enforcement (public or private) of the antitrust laws and effective competition policy.
2. The extent to which AAI can bring a unique perspective, focus, or analysis beyond that provided by the parties in the case and, contrariwise, the extent to which AAI's position would be well presented by one of the parties.<sup>1</sup>
3. The significance of the particular matter to consumers and the public.
4. The availability of highly competent lawyers to represent AAI with sufficient time to produce a high-quality brief and meet internal and external deadlines.

*Procedures*

The Director of Legal Advocacy ("Director") will be primarily responsible for managing the process of case intake and supervision of the preparation of amicus briefs. Amicus brief requests or opportunities will be evaluated by the Director, in consultation with AAI's President.

At the discretion of the President, the Director may solicit the input of an ad hoc group of members of the AAI Advisory Board or with other experts with diverse viewpoints. If the evaluation suggests to the President that a brief should be filed (or should not, but the matter is of great significance), the Director will forward a

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<sup>1</sup> Supreme Court Rule 37 provides, "An *amicus curiae* brief that brings to the attention of the Court relevant matter not already brought to its attention by the parties may be of considerable help to the Court. An *amicus curiae* brief that does not serve this purpose burdens the Court, and its filing is not favored."

recommendation to the Board of Directors and endeavor to identify counsel willing to handle the matter. If the board determines that AAI should file an amicus brief, counsel will be retained and a retention letter will be sent that includes a tentative schedule giving the Board of Directors sufficient time to review and comment on a final draft.

Requests for amicus participation by AAI, or other inquiries concerning amicus briefs, should be addressed to Richard Brunell, Director of Legal Advocacy, [rbrunell@antitrustinstitute.org](mailto:rbrunell@antitrustinstitute.org).