

## CONTENTS

	<u>Page</u>
<i>Foreword</i>	<i>vii</i>
<i>Preface</i>	<i>ix</i>
<b>Chapter I</b>	
<b>Introduction</b>	<b>1</b>
A. Application of Antitrust Law to the Insurance Industry.....	1
B. Growing Federal Oversight of the Insurance Industry.....	2
C. Purpose and Scope of This <i>Handbook</i> .....	3
D. Outline of <i>Handbook</i> and Explanation of Methodology .....	4
<b>Chapter II</b>	
<b>An Antitrust Overview of the Principal</b>	
<b>Federal Antitrust Statutes</b> .....	<b>5</b>
A. The Principal Federal Statutes.....	5
B. Enforcement of Federal Antitrust Laws and Penalties .....	7
C. Conspiracies in Restraint of Trade .....	8
D. Monopolization and Attempted Monopolization .....	17
E. Mergers and Acquisitions.....	19
F. The Relevant Market .....	20
G. Proof of Injury .....	21
H. State Antitrust Laws .....	22
<b>Chapter III</b>	
<b>Civil Litigation</b> .....	<b>25</b>
A. An Insurance Antitrust Complaint.....	26
B. Pleading an Antitrust Cause of Action .....	27
C. Class Certification .....	40
D. Arbitration.....	47
<b>Chapter IV</b>	
<b>Exemptions and Defenses</b> .....	<b>49</b>
A. Federal Exemptions .....	49
B. State Exemptions .....	73
C. Selected Other Defenses .....	77

**Chapter V**

<b>Ratemaking and Rate-Related Practices.....</b>	<b>81</b>
A. Rating and Advisory Organization Statistical Activities.....	82
B. Dealings with Competitors on Rate-Related Matters .....	97

**Chapter VI**

<b>Policy Form Standardization.....</b>	<b>101</b>
A. Procompetitive Potential of Policy Standardization .....	102
B. Anticompetitive Potential of Policy Standardization .....	104
C. Standard of Review Applied to Policy Form Standardization .....	105

**Chapter VII**

<b>Joint Underwriting and Exchange of Underwriting Information .....</b>	<b>113</b>
A. General Description of Joint Underwriting Arrangements.....	113
B. Antitrust Analysis .....	115
C. Availability of Antitrust Immunity .....	121
D. Exchange of Underwriting Information.....	124

**Chapter VIII**

<b>Product Marketing and Distribution .....</b>	<b>127</b>
A. Horizontal Agreements .....	127
B. Vertical Agreements .....	131
C. Availability of McCarran-Ferguson Act Immunity for Marketing and Distribution Arrangements .....	137
D. Tying and Bundling Arrangements .....	141

**Chapter IX**

<b>Provider Relationships .....</b>	<b>147</b>
A. Vertical Relationships between Insurers and Providers Absent McCarran-Ferguson Immunity.....	148
B. Horizontal Arrangements among Insurers Dealing with Providers .....	163
C. McCarran-Ferguson Act and Other Immunity Defenses.....	164

*Contents*

**Chapter X**

**Participation in Trade Associations and**

<b>Professional Societies.....</b>	<b>169</b>
A. Petitioning Activities .....	169
B. Nonpetitioning Activities.....	175

**Chapter XI**

**Application of the Antitrust Laws to**

<b>Insurance Company Mergers.....</b>	<b>181</b>
A. McCarran-Ferguson Act Immunity .....	181
B. Reporting and Waiting Requirements .....	183
C. Enforcement Policies .....	186
D. State Regulation of Insurance Mergers.....	192

**Chapter XII**

**An Overview of Antitrust in the**

<b>European Union.....</b>	<b>195</b>
A. The Principal Antitrust Rules .....	195
B. Article 101 TFEU .....	198
C. Article 102 TFEU .....	219
D. Mergers and Acquisitions .....	227

**Chapter XIII**

**The Patient Protection and Affordable**

<b>Care Act .....</b>	<b>241</b>
A. American Health Benefit Exchanges.....	242
B. Affordable Care Organizations.....	244

**Chapter XIV**

**Antitrust Compliance Programs for**

<b>Insurers .....</b>	<b>249</b>
A. The Unique Nature of Antitrust Compliance Programs for Insurers .....	249
B. Developing an Antitrust Compliance Program.....	250
C. Statements of Compliance Policy and Written Guidelines.....	254
D. Employee Education and Counseling .....	256
E. Compliance Implementation.....	257

*Insurance Antitrust Handbook, 3d Ed.*

F. Antitrust Audits .....	260
G. Conclusion .....	263
<i>Appendix</i> .....	265
<i>Table of Cases</i> .....	271