



## ANTITRUST POLICY

The National Truck Equipment Association (NTEA), a trade association of truck equipment manufacturers and distributors, recognizes and endorses the policies underlying the nation's antitrust laws. It is the belief of the NTEA that competition is the fairest and most efficient mechanism of economic regulation. Accordingly, any activity that intentionally or unintentionally reduces competition or restrains trade is contrary to that belief and the NTEA policy. In order to ensure that the NTEA members understand and comply with basic antitrust law and the NTEA policy, the NTEA has adopted the following Antitrust Policy.

### I. BACKGROUND

#### A. Application of Antitrust Laws to Trade Association Activities

Trade associations are subject to both federal and state antitrust laws. The most important antitrust statutes relating to an association's activities are **Section 1 of the Sherman Act and Section 5 of the Federal Trade Commission Act**. **Section 1** of the Sherman Act prohibits "contracts, combinations, or conspiracies...in restraint of trade." Since trade associations are by definition "combinations," they may be particularly vulnerable.

The Sherman Act prohibits any understanding affecting the price of a product regardless of the purpose of the understanding. For example, if members of an association reach any form of an understanding or agreement concerning price, they cannot justify the understanding by showing that it will benefit consumers.

An association's members and staff must also remember that the Sherman Act is a criminal conspiracy statute. If you are not an active participant--if you merely sit by at a meeting while the members of the association engage in an illegal discussion concerning price-fixing, you may be held criminally responsible, even though you said nothing during the discussion. Mere attendance at such a meeting may be sufficient to imply acquiescence in the discussion and thereby subject the individual liable to as great a penalty as those who actively agreed to fix prices. Other common violations of the Sherman Act are boycotts or agreements to allocate markets.

**Section 5** of the Federal Trade Commission Act prohibits "unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce." Unlike the Sherman Act, the Federal Trade Commission Act reaches anticompetitive acts committed by single persons or companies whether or not there is any agreement or "combination"; like the Sherman Act, it also covers joint actions. The FTC has broad power to determine what constitutes an unfair method of competition or unfair or deceptive act or practice under any given circumstances.

**B. Penalties for Violation of the Antitrust Laws**

Federal antitrust laws may be enforced against associations (and their members and staff) both by government officials and by private parties through treble damage actions. In both cases, penalties are severe. An individual convicted of a criminal violation of the Sherman Act may be fined as much as \$1,000,000 and imprisoned for up to ten years. A corporation convicted of such a criminal offense may be fined as much as \$100 million.

Violation of the Federal Trade Commission Act can result in issuance of a cease and desist order, which can place extensive governmental restraints on the activities of an association and its members or call for dissolution of the trade association itself. Failure to obey such an order can result in penalties of as much as \$11,000 per violation.

In addition to governmental prosecution for a criminal or civil violation, an association can face private action for treble damages brought by competitors or consumers. A finding of violation of an antitrust law in such a private action will result in payment by the convicted party of treble damages to the injured plaintiff.

**C. Potential Antitrust Problem Areas for Trade Associations**

From a practical standpoint, an association's members should focus their concern on five principal antitrust problem areas:

**1. Price-fixing**

Price-fixing is a major focus of antitrust enforcement. Because trade associations, by their nature, bring together competitors for the purpose of cooperative action, these organizations provide a context in which great care must be used to avoid running afoul of the price-fixing prohibitions of the Sherman Act. In some instances, a price-fixing violation may be inferred from similar price behavior by an association's members, even in the absence of a written or oral agreement. If price-fixing by an association or its members is established, the fact that the

prices set are reasonable or that the ends sought through the price-fixing behavior are worthy will not be an adequate defense.

**2. Agreement to Divide Customers**

An agreement among members of an association to divide customers is, in and of itself, a criminal act. The antitrust laws expressly prohibit any understanding or agreement between competitors or members of an association involving division or allocation of customers. Even an informal agreement whereby one member agrees to stay out of another's territory will constitute a violation of the antitrust laws.

**3. Membership Restrictions**

Assuming that the members of an association derive an economic benefit from membership, the denial of membership to an applicant who meets the membership criteria may constitute a restraint of trade because such a denial may limit the ability of the applicant to compete. Similarly, no member of a trade association can be forced to participate in discussions or attend association meetings.

**4. Standardization and Certification**

An association that develops voluntary industry standards may face antitrust problems if such a standard is designed to favor some competitors over others. Similarly, certification activities of an association that unreasonably further the interests of certain groups of members, to the exclusion of others, may result in antitrust problems.

**5. Industry Self-Regulation**

Associations commonly establish codes of ethics for their members, including procedures for enforcement of such codes. An association must guard against any efforts to enforce such codes of ethics if such enforcement would unreasonably result in economic injury to certain members.

**II. The NTEA ANTITRUST POLICY AND GUIDELINES**

It is the policy of the NTEA that no member shall intentionally or unintentionally:

- agree to fix or stabilize prices
- agree to limit production
- coerce members
- initiate boycotts
- agree to allocate markets
- influence current or future prices or otherwise act in restraint of trade or engage in anticompetitive conduct.

In order to ensure that the above policy will be fully implemented, the NTEA has adopted the following prophylactic guidelines and rules:

**A. General Operating Procedures**

1. A full description of the NTEA's intention to comply fully with the antitrust laws should be included in its bylaws and written policy statement.
2. All NTEA members and committees staff shall receive and familiarize themselves with this NTEA Antitrust Policy Statement.
3. The NTEA's legal counsel shall periodically update the NTEA members concerning antitrust problems.
4. The NTEA's legal counsel shall approve in advance, to the extent possible, all new NTEA programs or changes in existing programs that may have potential antitrust implications.
5. If possible, all NTEA meetings shall be regularly scheduled and conducted pursuant to the agenda and explicit procedural rules. In no case shall members hold informal "rump" meetings.
6. An agenda shall be prepared for each meeting of the NTEA. To the extent practicable, meeting agendas will be provided in advance to legal counsel for review.
7. To the extent practicable, legal counsel shall be present at all meetings at which sensitive issues will be discussed.
8. The minutes of all NTEA meetings should be accurate, and should never be approved if they have been doctored or are incomplete in any material respect. Meeting minutes for all meetings shall be provided to legal counsel for review.
9. Any action by the NTEA that has the effect of rejecting a membership application should not become final without approval by legal counsel.
10. The NTEA shall develop a formal document disposal program.
11. No NTEA member shall have authority to communicate with officials of the Federal Trade Commission or the Antitrust Division of the Department of Justice on behalf of the NTEA without prior approval of the Association's legal counsel.

**B. Membership Policy**

The NTEA shall not:

1. Exclude certain competitors from membership in the NTEA if those competitors meet the membership criteria.
2. Restrict NTEA members from dealing with nonmembers.

3. Unreasonably limit access to information developed by the NTEA, unless such limitation is firmly grounded upon the need to protect trade secrets.

**C. Topics of Discussion Which Shall Be Avoided at NTEA Meetings:**

1. Current or future prices. (Great care must be taken in discussing past prices).
2. What constitutes a "fair" profit level?
3. Possible increases or decreases in prices.
4. Standardization or stabilization of prices.
5. Pricing Procedures.
6. Cash Discounts.
7. Credit Terms.
8. Control of Sales.
9. Allocation of markets.
10. Refusal to deal with a corporation because of its pricing or distribution practices.
11. Whether or not the pricing practices of any industry member are unethical or constitute an unfair trade practice.

*Administrative revision to reflect change in references from Trustee to Director on Mar. 4, 2019.*