

NATIONAL ASPHALT PAVEMENT ASSOCIATION (NAPA) ANTITRUST POLICY

The antitrust laws seek to preserve a free competitive economy in the United States and in commerce with foreign countries. As a general rule, competitors may not restrain competition among themselves through understandings or agreements as to the price, the production, or the distribution of their products or services, or other agreements which unreasonably restrict competition. With some exceptions, competitors may not act in concert to restrict the competitive capabilities or opportunities of their competitors, their suppliers, or their customers.

The antitrust laws, however, are often of unclear applicability, and in certain circumstances unlawful agreements can be inferred from circumstantial evidence. Furthermore, penalties for violating the antitrust laws are severe. The guidelines set forth below are designed to avoid even the appearance of questionable activity by the Association and its members.

NAPA through its meeting activities brings together representatives of competitors throughout the industry. The subject matters of NAPA's activities are technical or educational in nature. Nevertheless, NAPA's Board of Directors recognizes the remote possibility that the Association and its activities can be abused and be seen by those unaware of or determined to violate the law as providing an opportunity for anticompetitive conduct. Through this statement of policy, the NAPA Board reiterates its unequivocal support for the policy of competition served by the antitrust laws and uncompromising intent as individual companies and as an Association to comply strictly in all respects with those laws governing competitive activities.

At all meetings of the National Asphalt Pavement Association's Board of Directors and committees, as well as all association-sponsored seminars, conferences, webinars and task force and working group sessions and among Association members, the following **will not be discussed**:

- Individual company prices, price changes, price differentials, markups, discounts, credit terms, etc.
- Individual company data on costs, production, capacity, inventories, sales, labor, supplies, etc.
- Agreements on terms of sale, warranties, or contract provisions.
- What constitutes a "fair profit level."
- Standardization or stabilization of prices.

- Pricing procedures or formulas.
- Confidential future marketing or pricing plans.
- Control of sales.
- Allocation of customers or geographic division of markets – agreements not to compete.
- Refusal to deal with a company because of its pricing or distribution practices.
- Whether or not the pricing practices of any industry member are unethical or constitute an unfair trade practice.
- Information concerning any individual company's costs, profits, inventory, market share, or other commercial information of a non-public nature.

Notwithstanding the prohibitions on certain cooperation between competitors described above, Association members may be immunized from antitrust liability when they cooperate to influence governmental action, such as joint legislative or regulatory initiatives. It should be viewed as very limited permission to influence jointly any branch of the government. It is important to remember that the doctrine immunizes cooperating competitors from liability only from any harm to competition that is caused by the resulting governmental action. It does not immunize competitors who behave or share information improperly at any time, even if they are doing so in the course of influencing law- or policy-makers. For example, competitors may not share future pricing moves with each other in preparation for an effort to convince a lawmaking body to set a price floor for an industry.

Further, if the Association embarks on the development of specific product standards or a code of ethics for its members or the compilation of industry statistics, such activities shall be developed and conducted in a manner consistent with applicable antitrust laws with the prior approval of the Board of Directors of the Association and advice of counsel.

To avoid even the appearance of questionable activity, as well as to guard against inadvertent conduct, Association meetings should observe the following guidelines and procedures:

- A written agenda will be prepared and adhered to.
- Accurate minutes of every meeting will be prepared and approved.
- Minutes of the meeting will be distributed to all committee members.
- In case of doubt about the propriety of a discussion, or a particular topic of discussion, Association counsel will be consulted.

- If a member has a reservation concerning remarks or discussion at an Association meeting, that member should state the reservation.

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