

NATIONAL ALLIANCE FOR ADVANCED TECHNOLOGY BATTERIES ANTITRUST COMPLIANCE POLICY

1. Policy of Full Compliance

As a trade association, the National Alliance for Advanced Technology Batteries (“NAATBatt” or the “Alliance”) is, by definition, an organization through which competitors work together for the common good of an industry. Because such cooperation among competitors may raise antitrust concerns, it is policy of NAATBatt to comply fully with all applicable antitrust laws, state and federal. Consistent with this policy of full compliance, NAATBatt has adopted this Antitrust Compliance Policy, which is applicable to all NAATBatt members, regardless of classification of membership, as well as all Officers, Directors, Staff, and other agents of the Alliance.

This Policy applies with full force and effect to all Alliance activities, including, but not limited to, meetings of the membership, Board of Directors, and Committees, as well as any other programs or activities facilitated by or on behalf of NAATBatt.

2. Procedures And Conduct

A. Procedures

(1) All NAATBatt membership, Board of Directors, and Committee meetings shall be conducted pursuant to agenda distributed in advance to attendees; discussions shall be limited to agenda items; there shall be no substantive discussions of official Alliance business matters between NAATBatt members other than at official meetings; minutes shall be kept of all Alliance membership, Board of Directors, and Committee meetings. All Alliance membership and Board of Directors meeting agenda and minutes shall be reviewed by the NAATBatt General Counsel prior to finalization. All NAATBatt Committee meeting agenda and minutes shall be reviewed by designated NAATBatt staff prior to finalization, who shall consult with the NAATBatt General Counsel concerning such agenda and minutes when they deem necessary.

(2) Attendance of the NAATBatt General Counsel at Board of Directors, Membership, or Committee meetings shall be at the discretion of the NAATBatt Chair.

(3) A copy of this NAATBatt Antitrust Compliance Policy shall be included in all Board of Directors Board Meeting Books, Committee meeting agenda, and with new membership materials. The existence of this NAATBatt Antitrust Compliance Policy shall also be announced at each membership meeting, and copies of this Policy shall be available to members at such meeting.

B. Conduct

(1) NAATBatt shall not engage in activities or discussions which might be construed as an attempt to: (a) raise, lower, or stabilize prices; (b) regulate production; (c) allocate markets; (d) encourage boycotts; (e) foster unfair trade practices; (f) assist in monopolization; or (g) in any way violate federal or applicable state antitrust laws.

(2) Any NAATBatt member who participates in conduct that the NAATBatt Board of Directors determines to be contrary to this NAATBatt Antitrust Compliance Policy shall be subject to disciplinary measures, up to, and including, termination of membership in NAATBatt in accordance with the NAATBatt Bylaws.

3. Standards-Setting Activities

The development of voluntary standards can be a useful means to promote higher quality and economic efficiency within an industry and can have pro-competitive effects. The promulgation of compulsory industry-wide standards is also a traditional area for antitrust enforcement concerns when it becomes a device to exclude or suppress competition from a market. NAATBatt may engage or assist in the promulgation of standards, provided that those standards are voluntary, non-exclusionary, and free of actual or implied sanctions for non-compliance. Interested parties that may be effected by the adoption or repeal of a standard, including parties that are not members of NAATBatt, will be provided an opportunity to comment through procedures developed by the Cell Standardization Committee and approved by the Board of Directors.

NAATBatt will permit the inclusion of patented items in the standards it promulgates, provided that the inclusion of such a patented technology must be: (1) justified by technical reasons; and (2) in accordance with the NAATBatt Patent Policy that is developed by the Cell Standardization Committee and approved by the Board of Directors.

4. Legislative and Public Policy Activities

NAATBatt's legislative and public policy programs will be an important aspect of the Alliance's activities and a key service that the Alliance will provide for its members to the benefit of the industry as a whole. As discussed above, cooperative efforts among competitors in many activities that occur in a trade association context must be carefully considered in light of antitrust concerns. However, the Supreme Court has held as a general matter that there is broad immunity from antitrust laws for bona fide cooperation by competitors to influence legislative action, even where that effort results in legislation that may in some manner restrain trade. The same principle extends antitrust immunity to joint efforts to influence regulatory and judicial actions. NAATBatt, through its Public Policy Committee, will ensure that all Alliance legislative and public policy activities constitute bona fide efforts to influence government action and that those activities are conducted in good faith.

5. General Overview of Pertinent Antitrust Laws

A. Federal Antitrust Statutes

The Federal antitrust provisions of primary concern to NAATBatt members acting within the NAATBatt context are Section 1 of the Sherman Act (15 U.S.C. § 1) and Section 5 of the Federal Trade Commission Act (15 U.S.C. § 45).

Section 1 of the Sherman Act prohibits agreements, combinations, or conspiracies in restraint of trade. Although courts have interpreted Section 1 to only prohibit "unreasonable" restraints of trade, the courts have further found that particular practices such as price fixing, group boycotts, or division of customers or markets are by their very nature so pernicious as to automatically be deemed "per se" unreasonable without the need for detailed inquiry as to their effect on the market.

Violation of the Sherman Act Section 1 is a felony, punishable by fines of up to \$100 million for each count for a corporation and up to \$1 million, and/or up to ten year's imprisonment, for individuals, although provisions put fines up to twice the gain or loss caused by illegal conduct. In addition, violation of the Sherman Act Section 1 may subject those involved to civil liability for treble damages.

Section 5 of the Federal Trade Commission Act prohibits unfair methods of competition and unfair deceptive acts or practices. Essentially any violation of the Sherman Act Section 1 would also constitute a violation of Section 5 of the Federal Trade Commission Act. Violation of Section 5 of the FTC Act may result in injunctions, cease and desist orders, and civil penalties against those involved.

B. State Antitrust Statutes

Most states have antitrust statutes which equate to the Sherman Act Section 1, except that they apply to actions affecting commerce within the state, as opposed to interstate commerce. The District of Columbia, where NAATBatt is based, has a state antitrust equivalent of the Sherman Act Section 1 at DC Code § 28-4502. Violation of the District of Columbia Antitrust Act subjects the violator to civil damages, which may be three times the amount of actual damages sustained.