The Alliance for Climate Transition

Antitrust Compliance Policy

Adopted as of 12 December 2023

Introduction

Congress passed the first U.S. antitrust law, the Sherman Act, in 1890 as a "comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade." Since then, the purpose of the antitrust laws has been to promote and preserve competition under which innovative and efficient firms can flourish. In particular, the antitrust laws prohibit any understandings or agreements between competitors that involve the reduction or restriction of free competition. Even informal agreements, whereby competitors agree to coordinate their conduct with regards to pricing, customers or other aspects of competition, can constitute a violation of the antitrust laws.

Statement of Policy

The Alliance for Climate Transition ("ACT") objectives are procompetitive and benefit consumers and the public generally, but because our activities involve meetings and other communications among competitors in the clean energy industry, ACT has adopted this Antitrust Compliance Policy ("Policy") to eliminate the unnecessary risk of antitrust infringements.

It is the Policy of ACT to comply with the antitrust laws, and all other competition laws applicable to its operations. This Policy is consistent with ACT's broader philosophy and one of its core values—that is, to conduct our relations and activities, internal and external, with high legal and ethical standards. Compliance with antitrust laws, as well as all laws, is a fundamental part of ACT's core values. Compliance means not only abiding by the letter of the law and ACT's policies, but also honoring their spirit and goals. To ensure that there are no discussions of inappropriate subject matters or agreements, meeting agendas and minutes may be prepared and retained as appropriate.

Because the antitrust laws are so important, and the consequences of a violation are so serious, ACT requires that each member of ACT agree to observe this Policy. ACT has retained outside legal counsel to assist in addressing antitrust questions, which may arise, however, ACT suggests that each member should consult with its own legal counsel regarding the antitrust laws in general, and if there are any questions with this Policy.

Noerr-Pennington Doctrine

The *Noerr-Pennington* doctrine is a judicially created defense against antitrust liability for activities that implicate the First Amendment petition right. The doctrine seeks to harmonize the Sherman Antitrust Act with other legal rights and principles included in the First Amendment, which guarantees citizens freedom of speech, of assembly, and "to petition the Government for a redress of grievances." To achieve this harmony, the U.S. Supreme Court has

ruled, in a line of cases known as the *Noerr-Pennington* doctrine, that private entities are immune from antitrust liability for their "attempts to influence the passage or enforcement of laws." A private entity, such as a trade association, whose activities ordinarily would be prohibited as anti-competitive, is immune from antitrust liability to the extent that the activities are a good faith attempt to seek government action, even if the action sought would be injurious to competition.

However, the *Noerr-Pennington* doctrine does not immunize anti-competitive conduct that extends beyond the petitioning activity, even if accompanied by a genuine effort to influence the government. To the extent that private entities attempt to achieve their policy aims not through influencing government action, but rather through coordinating, encouraging, or pressuring private corporations and investors to adopt certain practices, then the *Noerr-Pennington* doctrine may not apply.

To the extent that ACT and its members engage in efforts to influence government action—such as supporting the enaction of federal, state, or local legislation, adoption of favorable regulatory rulemaking or determination, or litigation before the courts—such efforts are not subject to antitrust liability. However, to the extent ACT and its members engage in activities that are separate from, or go beyond the petitioning activity, the *Noerr-Pennington* doctrine may be unavailable and ACT and its members should avoid those activities, if they could be construed as anti-competitive.