



## **E2Tech – Antitrust Policy**

### **Introduction.**

The antitrust laws of the United States and of Maine (and other states) prohibit agreements, combinations and conspiracies in restraint of trade. E2Tech must have an Antitrust Policy because E2Tech is, in part, a trade association. Trade and professional associations can be targets of antitrust claims since they are, by definition, combinations of competitors. Therefore, one element of a possible antitrust violation generally is present, and only some action by E2Tech that unreasonably restrains trade may need to occur for there to be an antitrust violation.

The consequences for violating antitrust laws can be severe. A conviction can carry stiff fines for the association and its offending leaders, jail sentences for individuals who participated in the violation, and a court order dissolving the association or seriously curtailing its activities. Antitrust laws can be enforced against associations, association members, and the association's employees by both government agencies and private parties (such as competitors and consumers) through treble (triple) damage actions.

Antitrust laws prohibit competitors from engaging in actions that could result in an unreasonable restraint of trade. Some activities by competitors are deemed so pernicious and harmful that they are considered per se violations – it does not matter whether or not the activities actually have a harmful effect on competition; the effect is presumed. These activities include agreements or other conduct, formal or informal concerning: price fixing, allocation of customers, markets or territories; bid-rigging; control of or limits on production of a product or service; and some forms of boycotts. Other activities such as standards development, certification programs, and relationships between distributors and suppliers generally are evaluated under a rule of reason – there is a balancing between the pro-competitive and anti-competitive aspects of the activities and the pro-competitive effects must outweigh the anti-competitive ones. These areas also should be approached with caution and with legal guidance.

### **Policy.**

E2Tech is committed to strict compliance with all applicable antitrust laws.

E2Tech and its members will avoid becoming involved in conduct that leads to or implies an agreement among its members that would restrain trade and/or otherwise violate antitrust laws. Any conduct by E2Tech's officers, directors or employees that is contrary to the antitrust laws is contrary to E2Tech policy. Any officer, director or employee found in violation of this policy or of the applicable antitrust laws will be subject to appropriate disciplinary action.

**Guidelines.**

E2Tech members should avoid discussing certain subjects when they are together – both at formal E2Tech membership, Board of Directors, committee, and other meetings and in informal contacts with other environmental and energy sector business members – and should otherwise adhere strictly to the following guidelines:

1. An E2Tech Board of Directors or Committee meeting should be held only if there are proper matters to be discussed which justify the meeting.
2. For each such meeting, an agenda should be developed and provided to each attendee. Participants at meetings should adhere to the agenda.
3. The meeting agenda should be specific and avoid topics that may cause antitrust problems, such as: prices, rates or fees; terms or conditions of sale; credit terms; discounts; profits, profit margins or costs; product or service offerings; market shares; distribution practices or channels; boycotts or refusal to do business; current or potential bids; sales territories or markets; selection of customers or suppliers; and production or sales volume.
4. No meetings should include recommendations with respect to “sensitive” antitrust subjects such as those listed in Guideline 3 above.
5. If a subject of doubtful legality is brought up at a meeting, the person leading the discussion should be told immediately that the subject is not a proper one for discussion and discussion should be halted. Should the discussion continue, despite protest, it is advisable that attendees leave the meeting.
6. Minutes of all Board of Directors meetings and Annual Meetings should be kept that accurately report what actions, if any, were taken.
7. E2Tech membership is available to all interested and eligible parties, and no applicant for membership who otherwise meets membership qualifications set forth in the E2Tech Bylaws may be rejected for any anti-competitive purpose.
8. Make certain that no officer, director or member of the association makes any statement – orally or in writing – which states or appears to state an official policy or position of E2Tech without specific authorization to do so.
9. Members should check with E2Tech’s Executive Director if there is any doubt about the propriety of an E2Tech program or subject of discussion. Members may also wish to consult with their own company’s counsel.
10. This E2 Tech Antitrust Policy will be presented in summary form at the beginning of each E2Tech Annual Meeting and will be posted on the E2Tech website.

Prepared: 1-2-2014

Reviewed by Executive Committee: May 23, 2014

Recommended by Board of Directors: July 18, 2014

Adopted by Annual Meeting: Nov. \_\_, 2014