

**ENERGISTICS CONSORTIUM, INC.**  
**ANTITRUST COMPLIANCE POLICY**

This document contains the “Antitrust Policy,” “Antitrust Guidelines” and “Antitrust Reminder” that together represent the antitrust compliance program of Energistics Consortium, Inc. (“Energistics”). This document is intended to educate Energistics members about the federal antitrust laws which are applicable to trade association activities, and to serve as a basic guide to assist Energistics and its members in conducting meetings and activities in conformity with these laws.

**I. Antitrust Policy**

It is the policy of Energistics to comply strictly with all laws that relate to the conduct of its activities, including the antitrust laws of the United States. All Energistics members, officers, and staff must familiarize themselves with the Energistics “Antitrust Guidelines,” and shall agree to conform all Energistics sponsored meetings and activities, in strict accordance with the Guidelines. The Guidelines shall be updated and revised as appropriate by the Board of Directors of Energistics in consultation with counsel. The Guidelines are intended to provide basic guidance on the antitrust laws that may be applicable to Energistics activities. Counsel should be consulted in all cases involving specific situations, interpretations or advice. An Energistics staff member or counsel shall attend all meetings, and counsel shall attend any meeting in which issues with antitrust implications are expected to be discussed.

**II. Antitrust Guidelines**

***A. Overview of the Antitrust Laws***

The antitrust laws are intended to foster and protect competition. As such, the laws prohibit particular anticompetitive activities, and more generally those which are deemed to unreasonably restrain trade. Agreements among competitors are inherently suspect under the antitrust laws. Therefore, while the purpose of Energistics is to promote data exchange standards for the upstream oil and gas industry among industry participants, group activities of competitors—such as those conducted by a trade association—are inherently suspect under the antitrust laws. For this reason, Energistics has developed these Antitrust Guidelines to provide a general overview of antitrust laws and specific guidelines to assist Energistics in conducting its activities in conformity with antitrust laws.

***B. Sherman Act***

The basic statutes which are applicable to trade associations are the Sherman Act and the Federal Trade Commission Act. The Sherman Act prohibits “contracts, combinations or conspiracies in restraint of trade or commerce.” Taken together, the contract, combination or conspiracy requirement has been found to exist where there is some form of agreement between two or more parties. Such agreements may be explicit, e.g., taking the form of a contract or other oral or

written communication, or implicit, e.g., implied by the conduct of the parties and construed to indicate an agreement was formed.

In most cases, the prohibitions of the Sherman Act extend only to transactions that are found to be unreasonable restrictions on competition. Hence, courts examine the “reasonableness” of the restraint involved in light of all the relevant circumstances. In applying this “Rule of Reason” to alleged anticompetitive business activities, the courts conduct an extensive economic analysis of the alleged restraint on trade, the business context in which it arose, its purpose and probable anticompetitive effects, and the business or economic justification for the restraint. The categories of per se violations are discussed below. Certain activities, however, are deemed unlawful without a detailed examination of their context or effects on competition and constitute “per se” or automatic violations of the Sherman Act.

### ***C. Federal Trade Commission Act***

Section 5 of the FTC Act prohibits “unfair methods of competition” and “unfair or deceptive acts or practices.” The FTC Act’s broad enforcement provision empowers the Commission to determine the meaning of “unfair”. In addition, activities considered illegal under the Sherman Act also are generally unlawful under Section 5 of the FTC Act. Furthermore, Section 4 of the FTC Act empowers the FTC to take action against “incipient” unfair practices; that is, conduct which does not yet amount to—but is likely to lead to—a violation of the other antitrust statutes.

### ***D. Enforcement and Penalties***

The U.S. Department of Justice, states, and private parties harmed by the anticompetitive conduct of others may bring suit for violations of the Sherman Act. Enforcement of the FTC Act is vested exclusively in the FTC. Violations of the Sherman Act may result in both criminal and civil penalties. In addition, private plaintiffs may recover three times the amount of damages suffered, plus the costs of bringing suit, including attorney’s fees.

In the past, not only organizations, but their officers and directors have been found criminally and civilly liable for antitrust violations. In addition to the strict penalties associated with antitrust violations, the courts and the FTC have ordered the dissolution of associations found to have engaged in anticompetitive practices. Therefore, it is imperative that all Energetics members, officers and staff take all appropriate measures to minimize the risk of antitrust violations.

### ***E. General Antitrust Guidelines***

This section describes types of activities and practices that courts have found to constitute violations of the Sherman Act. Energetics officers, staff and members must take extreme care to avoid even the appearance of engaging in these types of activities, as well as any others which could be construed as having an anticompetitive intent or purpose. Attached to these Guidelines

is an Antitrust Reminder which may serve as a “checklist” for Energistics to circulate to members on a regular basis and prior to meetings, perhaps by furnishing a copy with the meeting agenda.

Per se violations have traditionally included agreements among competitors that have the purpose and effect of “fixing prices,” “allocating territories,” or “boycotting third parties.” Under the antitrust laws, “price fixing” includes much more than an agreement to set prices at a particular level, within a specific range, or in accordance with a particular formula. It potentially includes any agreement which tends to raise, fix, stabilize or otherwise affect price. Thus, even if the parties permit the price to vary somewhat under the agreement, the agreement is illegal if it has the effect of stabilizing the price among those participating in the conspiracy. Similarly, price fixing includes agreements to control other factors that directly or indirectly affect price, such as establishing production levels, setting uniform discounts, credit or warranty terms, or agreeing on matters relating to costs, especially when those costs account for a substantial percentage of the final price.

At no time shall any discussion or agreement among Energistics members take place regarding product prices, price changes, supply and demand for products or raw materials, or any other subjects bearing on product pricing.

Territorial or market allocation involves an agreement among competitors operating at the same level of the market structure—such as manufacturers, distributors, etc.—to divide the market in such a way as to allow each party to the agreement to serve its share of the market without competition from the others. Such prohibited allocations in the past have been made on the basis of geographical boundaries or particular types of customers.

No discussions or agreements shall take place concerning allocation or division of markets or geographical or other restrictions on representatives, distributors or other customers of Energistics members’ products.

Group boycotts or “refusals to deal” are considered per se violations in certain instances. Agreements or collective action to refuse to deal with certain suppliers, customers, or other competitors, or to undertake actions that tend to exclude certain participants from the marketplace or deny them access to a significant competitive benefit available to others in the market are prohibited. Before the per se rule is applied, however, several factors are considered, such as whether the activity was undertaken for an anticompetitive purpose, whether the group possesses market power, and whether it holds exclusive or unique access to a business element necessary for effective competition.

In the trade association context, group boycott issues may arise in relation to membership or exhibition restrictions, or in disciplinary or expulsion action against members. Because these situations must be analyzed closely in accordance with strictly defined legal guidelines, counsel

should be notified prior to Energistics' consideration of any of these actions.

Energistics members shall not engage in any discussion or agreement concerning particular representatives, distributors, other customers, or suppliers involving decisions to deny, limit or terminate business relations between any Energistics member and such firms. Also, counsel shall be notified prior to any discussion by Energistics concerning restricting or denying membership or exhibition space to any nonmember firm which competes in the industry.

In addition to the issues described above, other antitrust problems may arise where trade association activities are undertaken which may have anticompetitive effects on non-members. Particular guidelines must be followed before undertaking any association project, such as an industry survey or other statistical program, or petitioning industry or government organizations on matters which may have a competitive impact on non-members. Accordingly, counsel must be contacted before discussing or planning these programs.

### **III. Antitrust Reminders**

#### **DON'Ts:**

Do Not—in fact or appearance—discuss or exchange information with actual or potential competitors regarding any of the following matters, either on the Energistics website, during Energistics sponsored meetings or gatherings or otherwise discuss or exchange:

- Individual company prices, price changes, price differentials, mark-ups, discounts, warranties, allowances, credit terms, costs, production levels, capacity, sales, etc.
- Plans of individual companies concerning the design, production, distribution or marketing of particular products, including proposed territories or customers.
- Division or limitation of sales to particular territories, customers or classes of customers.
- Refusal to sell to or purchase from, or termination or modification of sales or purchase arrangements with representatives, distributors, or other third parties, or prices or terms of sale or resale by customers.
- Industry pricing policies, price levels, price changes, differentials and/or changes in industry production, capacity or inventories.
- Matters relating to actual or potential individual suppliers or customers that might exclude them

from any market or of influencing the business conduct of firms toward such suppliers or customers.

- Limiting or eliminating competition in any way, or efforts to create a monopoly.
- Energistics membership, denial of membership, or expulsion of members other than in formal meetings with the participation of counsel.

Do not discuss or exchange information regarding the above matters during Energistics events or communications through Energistics sponsored message boards or at Energistics sponsored meetings, even in jest.

DOs:

Before meetings, prepare and have counsel review agendas of particular items to be discussed at meetings and adhere to the agenda unless additional matters for discussion have been approved in advance by staff or counsel of Energistics.

Ensure that draft meeting minutes are promptly prepared after each meeting, reviewed by counsel, and then circulated to members present at the meeting to determine that the minutes accurately reflect the proceedings.

Protest any discussions or meeting activities which appear to violate the antitrust laws or the Energistics' Antitrust Compliance Policy and Guidelines; disassociate yourself from any such discussions or activities and leave any meeting in which they continue. Be sure that staff and counsel of Energistics are made aware of any such activities.

Provide members and staff of Energistics with a copy of this checklist and have a copy available for reference at all Energistics sponsored meetings.