

**The National Coal Council
The National Coal Council, Inc.**

I. General Antitrust Guidelines for members of The National Coal Council (“NCC”) and The National Coal Council, Inc. (“NCC Inc.”)

The National Coal Council was created by the Secretary of Energy, under the authority of the Federal Advisory Committee Act (“FACA”), and certain other regulations in 1984. The Secretary has appointed you as a voluntary non-paid member to provide advice and counsel to him/her under that statute and other governing documents, in accordance with strict procedures that are monitored by the Secretary or designee, and NCC staff and outside counsel. NCC Inc. is an administrative non-profit corporation whose sole function is to assist NCC to carry out its legal mandate. You are not only a member of NCC but by virtue of that appointment are automatically a shareholder in NCC, Inc. The guidelines set forth hereunder apply equally to both entities.

Membership in these organizations confers no immunity from the Federal or State antitrust laws. These guidelines do not constitute specific legal advice to you; for that you should speak to your own counsel. The guidelines do, however, state a general consensus as to standards you should be aware of and suggest conduct that must not be a part of your NCC and NCC, Inc. service.

Guidelines

1. A written agenda for all NCC and NCC, Inc. meetings will be prepared by NCC staff, reviewed by outside counsel and sent to all attendees in advance of each NCC or NCC, Inc. meeting.
2. All NCC and NCC, Inc. meetings will be conducted in accordance with FACA and NCC, Inc.’s Bylaws and policies, as appropriate.
3. Since all NCC meetings are conducted under FACA, a written transcript will be created and maintained. Any person speaking at such meeting should apply a “clear and unambiguous” standard to all their verbal and written communications. Facetious remarks can be interpreted incorrectly and affect the outcome of litigation; innocent intentions, of themselves, cannot be relied on as a defense to allegations that may later arise.
4. Every NCC or NCC, Inc. meeting must be attended by an NCC, Inc. staff member. Where it appears that matters of antitrust sensitivity might arise at a meeting, outside counsel will be present.
5. Some subjects are obviously more antitrust-sensitive than others, and discussion of some matters at NCC meetings could raise serious antitrust questions and should therefore be avoided altogether. Staff and/or counsel who attend NCC meetings should carefully monitor the course of discussion and, where appropriate, cut off discussions that may stray into prohibited or particularly sensitive areas. Under no circumstances should any “off the record” remarks be permitted at FACA meetings.

6. The following are representative, but not all-inclusive, of the subjects that raise obvious antitrust concerns, and care should always be exercised if discussion at NCC meetings touches these areas.
 - a) Prices of goods, commodities or services, including transportation tariffs, rates and classifications, are the most sensitive areas for antitrust concern. "Price" as used in the antitrust laws includes not only sales prices, but also purchase prices, discounts, warranties, credit terms, allowances and other forms of rebate or surcharge or other contract terms (e.g., delivery charges) affecting price. Under no circumstances should individual company prices, price-related terms or forecasts of prices be exchanged or discussed. There should be no discussions even of composite prices (e.g., average prices of several companies) or exchanges of aggregate price information unless the prior express approval of outside counsel has been obtained.
 - b) All NCC participants should bear in mind that "price fixing," as defined by the courts, includes more than just understandings or agreements with competitors on a specific sales price. It may include, for example, agreements or understandings to stabilize, raise or lower prices, to pass along increases in materials or labor costs, to limit production, to standardize warranties or discounts or even to limit price increases.
 - c) An exchange or discussion of confidential individual company statistical data must be avoided at all NCC meetings. Discussion of previously published data or of composite statistical data gathered by or for NCC should be carefully structured to avoid any appearance of "signaling" among competitors or any suggestion that competitively sensitive information is being shared. NCC counsel must be alerted in advance to any anticipated consideration of such matters at any NCC meeting.
 - d) Market shares of individual companies or the allocation of business or customers or markets among competitors must not be discussed.
 - e) Refusals to deal with competitors, suppliers, and customers or with anyone else must not be discussed.
 - f) Schedules for industry compliance (whether voluntary or mandated) with government-proposed regulations or portions thereof must not be discussed.
7. All NCC business affairs, and particularly those possibly raising antitrust issues, must be confined to meetings at which NCC staff and/or outside counsel are present. Some NCC meetings might include discussion of government proposals in areas of science and technology and government standards, compliance schedules and self-certification plans. NCC meetings to develop policy recommendations on these subjects may be sensitive from an antitrust standpoint, particularly if such recommendations might have an economic impact on a competitor. In such circumstances, members should be particularly sensitive to potential anti-competitive effects and review these matters with counsel.

II. Statistical Information

NCC is sometimes involved in statistical data collection for the purpose of preparing its studies. Work such as this must be conducted under the strict monitoring and control of counsel.