

**ANTITRUST
COMPLIANCE
POLICY**

OF

**DELTA COMPANIES INC.
AND ITS SUBSIDIARIES**

**. . . strict compliance with the letter
and the spirit of the antitrust laws . . .**

Antitrust Compliance Policy

It is the policy of Delta Companies Inc. and its subsidiaries to comply with all laws. An important aspect of this policy is our commitment to obey the letter and spirit of the antitrust laws. Violations of the antitrust laws, and the potential damage to Delta Companies Inc.'s resources and reputation, are of such serious consequence as to require the constant vigilance of all Delta Companies Inc.'s officers and employees.

The policy guidelines provided herein are designed to educate you about the requirements of the antitrust laws that are most directly applicable to Delta Companies Inc.'s business. This Policy is not a complete explanation of the antitrust laws, but it will assist you in your day-to-day business activities and help you recognize when antitrust questions are present so you can obtain timely legal advice. Whenever you encounter a situation which you believe raises antitrust concerns, you should promptly consult with your superior or Delta Companies Inc.'s Legal Counsel.

We want to reaffirm that it is the obligation of every Delta Companies Inc.'s employee to adhere to this Policy. Moreover, each officer and manager throughout the Company has the responsibility to ensure that our Policy and the enclosed policy guidelines are communicated to, and understood and observed by, all Delta Companies Inc. employees. Your full support of this Antitrust Compliance Policy is critical to Delta Companies Inc.'s continued success.

Ric Neubert
President

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STRICT COMPLIANCE

Delta Companies Inc.'s policy is **strict compliance** with the letter and the spirit of the antitrust laws.

This policy shall apply to Delta Companies Inc. and all of its subsidiaries.

- **Study this Antitrust Compliance Policy carefully:**

It identifies certain actions which would clearly violate Delta Companies Inc.'s policy. It will also help you recognize other antitrust problem areas and help you realize when you need legal advice. Violations of Delta Companies Inc.'s antitrust compliance policy will be cause for disciplinary action, up to and including termination.

- **This Policy is not an exhaustive statement of the law:**

It deals only with key provisions of the antitrust laws which are of direct day-to-day concern to Delta Companies Inc. employees.

- **This Policy does not provide you with the means to act as your own lawyer:**

Solving legal problems is a function of Delta Companies Inc.'s legal counsel. However, counsel cannot participate in every action you take. Thus, the burden is frequently on you to recognize potential problem areas and to consult competent legal counsel before you act.

LEGAL COUNSEL:

Any and all antitrust issues should be directed immediately to Anthony L. Martino, II, Esq. Mr. Martino is General Counsel for Colas Inc. and may be reached at 973-656-4820 or amartino@colasinc.com.

INTRODUCTION TO THE ANTITRUST LAWS

The antitrust laws are the legal rules designed to preserve free and open competition as the rule of trade in our market-oriented economy. To accomplish that purpose, the antitrust laws declare that certain kinds of business conduct are illegal as restraints of trade or as creating, or tending to create, a monopoly. The types of conduct prohibited in whole or in part are wide-ranging and include price-fixing and bid-rigging, division of customers or markets among competitors, and, in some cases, combinations among competitors to refuse to deal with other competitors, customers or suppliers.

There are four principal federal antitrust laws that may apply to Delta Companies Inc.'s construction, asphalt manufacturing and construction aggregates divisions:

- (1) **The Sherman Antitrust Act** prohibits unreasonable restraints of trade that would occur through agreements among competitors or the acts of a single monopolist.
- (2) **The Clayton Act** provides rules governing several particular types of restraints of trade and prohibits mergers and other forms of business combinations which might lessen competition.
- (3) **The Robinson-Patman Act** prohibits certain discrimination in price (meaning price differences) where the effect may be substantially to lessen competition.
- (4) **The Federal Trade Commission Act** empowers the Federal Trade Commission to investigate and proceed against unfair methods of competition, which at a minimum allows the Commission to challenge conduct that is prohibited under the other antitrust statutes.

In addition, many states have their own antitrust statutes, which are similar to the Sherman Act in prohibiting agreements among competitors that unreasonably restrain trade.

KEY ANTITRUST CONCEPTS

Two concepts deserve special attention:

- **Agreements** -- Neither an express agreement, nor even a handshake, is necessary for an illegal agreement to arise. Responding to pressure or doing what you know is expected can sometimes be interpreted as showing the existence of an agreement. An agreement may be inferred from your actions. Therefore, avoid contact or conduct which might raise any suspicion that an agreement exists.
- **Per se illegal** -- Agreements to engage in certain types of activities are considered so inherently anticompetitive that they are *per se* illegal. *Per se* illegal means that the agreement, in and of itself, is illegal. There is no defense or excuse for such agreements.

DEALINGS WITH COMPETITORS

Price Agreements

Any agreement with a competitor that merely restricts or limits prices to be charged is *per se* illegal.

It does not matter that the price agreement decreases, rather than increases, prices; that the agreed upon prices are reasonable; that the purpose of the price agreement is to prevent harmful or even ruinous competition; that the prices agreed upon are not uniform; or that no exact price is fixed. Such agreements regarding prices are *still per se* illegal.

It also does not matter if an agreement between competitors only concerns underlying components of prices, such as terms and conditions of sale like discounts, freight charges, and credit. An agreement between competitors as to an element of their prices is *just* as illegal as an agreement between competitors to charge the exact same price.

Delta Companies Inc.'s prices, discounts, fees and credit terms are to be arrived at independently by Delta Companies Inc. without consultation with competitors.

Remember --

- * **Never discuss prices, price adjustments due to rising costs, profit levels, discounts, commissions, fees, credit terms or other terms relating to price with a competitor.**
 - If a competitor attempts to enter into such a discussion, terminate the conversation immediately and telephone Delta Companies Inc.'s Legal Counsel.
 - Never provide to, or accept from, a competitor a price or commission sheet, a credit term sheet, or other information from which prices can be computed. While pricing information of competitors may be obtained from customers, customers should not be used merely as clearinghouses for exchanging pricing information. **Note the date and source of all pricing information obtained on the face of the material before you file it within Delta Companies Inc.'s records.**

DEALINGS WITH COMPETITORS

Bid-Rigging

An agreement among competitors to fix or rig bids is a *per se* illegal agreement just like an agreement to fix prices.

In addition to the prosecution of bid-rigging activity by the federal government under federal antitrust laws, activity to interfere with the bidding process may also be prosecuted by the Government under statutes prohibiting mail and wire fraud, or the making of a false statement to the Government. False statement cases have recently been based on bidders' certifications, as part of the required bid submission, that bid prices have not been disclosed to other bidders or competitors prior to the sealed bid opening.

Remember –

- * **Never propose or agree with a competitor to designate the low bidder.**
- * **Never propose or agree with a competitor to submit identical bids.**
- * **Never propose or agree with a competitor to submit a non-competitive courtesy bid.**
 - Courtesy bids, or “safe” bids that are intentionally high, have been found to violate the antitrust laws even where the courtesy bid was submitted by a competitor who had unilaterally decided, prior to submitting the courtesy bid, not to compete for that contract.
- * **Never propose or agree with a competitor to refrain from bidding.**
- * **Never advise a competitor whether you are bidding or ask a competitor whether he will submit a bid.**
- * **Never suggest or specify bid prices or component prices to a competitor.**
- * **Do not exchange or compare bids prior to bid openings.**
- * **If a competitor attempts to enter into such a discussion, or proposes such an agreement in any way, terminate the discussion and notify Delta Companies Inc.'s Legal Counsel immediately.**

DEALINGS WITH COMPETITORS

Allocation of Marketing Territories

It is *per se* illegal for competitors to agree to divide or allocate territories in which they will market their products and services.

However, the antitrust laws permit a company to market its products and services as it independently chooses and to whom it independently chooses.

Remember --

- * **Never agree with a competitor to market or bid, or to refrain from marketing or bidding, in any particular location or territory. For example, it would be illegal for two construction companies to agree that one would submit bids for projects in Cape Girardeau County but not Perry County, while the other would submit bids for projects in Perry County but not Cape Girardeau.**
- * **If a competitor attempts to enter into such a discussion, or proposes such an agreement in any way, terminate the discussion and notify Delta Companies Inc.'s Legal Counsel immediately.**

Allocation of Customers

It is *per se* illegal for competitors to agree to divide or allocate customers with whom they will deal.

Remember --

- * **Never agree with a competitor to deal or to refrain from dealing with any particular customer or class of customers. For example, it would be illegal for two construction companies to agree that one would bid only on government projects, while the other would bid only on private projects.**
- * **Never agree to divide or share a customer's business with a competitor.**
- * **If a competitor attempts to enter into such a discussion, or proposes such an agreement in any way, terminate the discussion and notify Delta Companies Inc.'s Legal Counsel immediately.**

DEALINGS WITH COMPETITORS

Joint Refusals to Deal (Boycotts)

An agreement among competitors not to do business with a particular customer or supplier may be an unlawful boycott in some circumstances.

An agreement among competitors with market power to boycott customers or suppliers in order to discourage them from doing business with another competitor is an antitrust violation, even if the reason for the boycott seems to have a noble purpose.

Delta Companies Inc. has a legal right to choose its customers, and to refuse to deal with anyone. But decisions to exercise this right should generally be made independently, without consultation with competitors. While joint and exclusive arrangements may be legal and appropriate in certain circumstances, such arrangements should be reviewed with Legal Counsel prior to being implemented.

Remember --

- * **Never agree with a competitor or customer that Delta Companies Inc. will not do business with another company.**
- * **Under certain circumstances, it may also be illegal for Delta Companies Inc. and another company to agree not to solicit each other's employees. Delta Companies Inc. should remain free to recruit new employees just as Delta Companies Inc. should remain free to do business with any supplier or customer that it chooses.**
- * **If you receive such a request from a competitor, you should respond that Delta Companies Inc.'s policy forbids such discussions and end the communication. Thereafter, report the communication to Delta Companies Inc.'s Legal Counsel.**

DEALINGS WITH CUSTOMERS AND SUPPLIERS

Price Discrimination

Price discrimination exists where a seller makes sales at different prices to different customers who are purchasing the same products in the same general timeframe and who compete with one another. Typically, actual net prices – after reduction of all discounts, rebates, surcharges and other factors that affect net price – are compared to determine if there has been illegal price discrimination. Differences in credit terms, as well as the withdrawal of credit, may constitute illegal price discrimination if such credit decisions are not based on legitimate business reasons.

The law provides for certain defenses to price discrimination. For example, sales at a different price to a particular customer in order to meet competition is permissible; but the price must be the same as the competitor's price and not go below it. The law also permits a different price where the price differential is justified because of cost savings to the seller based on differing methods or quantities in which the product is sold or delivered to different customers.

Transfer of product between affiliated companies, such as a parent and subsidiary corporations or two subsidiary corporations, are not considered "sales" for purposes of price discrimination where the selling company controls the pricing and marketing decisions of the purchasing company, and the companies function as a single enterprise.

In addition, the antitrust laws prohibit a buyer from knowingly inducing a supplier to offer a discriminatory price in certain circumstances. Delta Companies Inc. should also be aware of price discrimination issues when it acts as a buyer of others' products.

Remember –

- * Granting of different prices to different customers by a seller can give rise to antitrust concerns, as can a buyer's inducing of a different price from a supplier. The law in this area is complex. Legal Counsel should always be consulted on such pricing issues.**
- * You can refuse to sell to a specific customer where there is reasonable alternate material.**
- * You can give price discounts for prompt payment, credit worthiness, or quantity purchases, so long as such discounts are available to all customers.**

DEALINGS WITH CUSTOMERS AND SUPPLIERS

- * **You can refuse to give credit terms if that decision is based on legitimate business reasons.**
- * **You can give a price discount to meet competition, but your reduced price should be the same as the competitor's price and not go lower.**
- * **You should not pay commissions or brokerage fees as a method of price discrimination.**

Pricing Below Cost (Predatory Pricing)

In particular situations, the federal antitrust laws require that a seller price its products or services at levels higher than an appropriate measure of costs, such as a total cost or average cost measure. This requirement generally arises where the seller has market power such that if it sold its products or services below cost, smaller competitors would be driven out of the market and the seller thereafter could recoup the losses from its below-costs sales by raising its prices.

Antitrust rules in this area are very complex, and Legal Counsel should be consulted in situations where Delta Companies Inc.'s prices could be regarded as below cost.

Remember –

- * **Whenever Delta Companies Inc. intends to issue a product or service price to a customer that might be considered below Delta Companies Inc.'s costs in providing such product or service, Legal Counsel should be advised immediately.**

Reciprocal Dealing

Reciprocal dealing occurs when a company agrees to buy the products or services of a supplier on the condition that the supplier also agree to buy products or services from it.

Reciprocal dealing gives rise to antitrust concerns where the company proposing the reciprocal deal has buying power and, as a result, may be able to coerce its supplier into also buying its products or services.

Remember --

- * **While it may be possible to structure a legal agreement for reciprocal dealing, such an agreement should not be negotiated by Delta Companies Inc. without the consultation of Legal Counsel.**

DEALINGS WITH CUSTOMERS AND SUPPLIERS

Tying Arrangements

The “tying” of products together occurs when a seller requires a customer to purchase one product (the tying product) only on condition that the customer also purchase a different (or tied) product. A tying arrangement can also exist where the seller requires the customer to purchase other supplies or goods from particular sources.

Whether a tying arrangement is illegal or not depends on particular circumstances, such as the seller’s market power in the market for the tying product; the seller’s economic interest in the sales of the tied product; and the actual competitive situation in the specific marketplace at issue.

Remember --

- * Tying products together may be an antitrust violation in certain circumstances. Legal Counsel should always be consulted before Delta Companies Inc. implements any form of tying arrangement.**

Exclusive Dealing (Requirements Contracts)

Exclusive dealing arrangements generally take the form of agreements in which a buyer agrees to purchase products or services for a significant period of time exclusively from one supplier. Such arrangements include contracts in which a buyer agrees to purchase all of its requirements for a particular product or service from one supplier.

Exclusive dealing arrangements are not automatically illegal under the federal antitrust laws. Some requirements contracts can be pro-competitive where the purchaser benefits by stabilizing the price it pays, or assuring product availability, over a reasonable period of time.

However, depending on the particular circumstances of the particular marketplace at issue, exclusive dealing arrangements may be unlawful if they serve to unreasonably reduce the business opportunities of competitors.

Remember --

- * Exclusive dealing arrangements, including requirements contracts, are not always unlawful. Under particular types of market circumstances, exclusive dealing arrangements can violate the federal antitrust laws. Legal Counsel should be consulted when Delta Companies Inc. intends to enter into an exclusive dealing arrangement.**

VERTICAL INTEGRATION ISSUES

Delta Companies Inc. is a vertically integrated company that supplies aggregate to its asphalt division as well as to asphalt competitors; that supplies asphalt to its construction division as well as competing construction companies; and that bids on construction projects.

Such vertical integration, where a company acts on multiple levels of an industry, presents special antitrust concerns, such as when a company uses “leverage” or engages in a “price squeeze.”

Leveraging

Leveraging is the use of monopoly power in one market to gain an improper advantage in another market.

Leveraging claims are controversial in that courts differ as to whether an abuse of monopoly power in the first market is required, and as to whether an actual attempt to monopolize the second market is required as opposed to the mere gaining of an advantage.

Price squeezes can be viewed as one form of unlawful leveraging.

Price Squeezing

An unlawful price squeeze may occur where a company has market power with respect to one product; its price for that product is higher than a fair price; that product is required to compete in a second market where the company also competes; and the company’s price in the second market is so low that competitors cannot meet it and still make sufficient profit to stay in business.

Thus, a price squeeze claim cannot arise unless a company is operating in two different markets where the product sold in the first market is utilized in the second, and the company possesses market power in the first market.

Remember --

- * **Delta Companies Inc.’s vertical integration requires consideration of its pricing decisions and other business decisions as a whole across all of its businesses.**

VERTICAL INTEGRATION ISSUES

Information Transfers

Because Delta Companies Inc. is a vertically integrated company, it receives information from many different suppliers and customers at many different levels within the industry. Attention should be paid to the transfer of business information gathered by one Delta Companies Inc. division to another Delta Companies Inc. division.

TRADE ASSOCIATION ACTIVITY

A trade association by nature is a combination of competitors that is formed for legitimate reasons of industry-related business, but that has the capacity to serve as a conduit for improper collusive activity. Accordingly, the same awareness of the antitrust laws that governs Delta Companies Inc.'s own business activities should also govern Delta Companies Inc.'s trade association activity.

Remember –

- * **Never discuss competitively sensitive topics at trade association functions, such as prices, costs and pending or future bids. The same rules prohibiting certain conduct with individual competitors also apply to trade association activity.**

- * **A trade association's statistical reporting, member surveys or collective research should not address current or future price or cost information. Participation by members in such associational activity should be voluntary.**
 - Trade associations may collect historical pricing information without violating the antitrust laws. However, the collection of members' historical pricing information should be done by an outside third party who will not reveal members' individual pricing information to the trade association or its members.
 - The publication of historical pricing information should be done on an anonymous, aggregate basis so that no particular member's historical pricing information can be identified. Aggregate publication of historical pricing information should not be done unless the information is provided by at least three members.

- * **Industry standardization can create antitrust problems if the effect of the standardization is to discriminate among competing businesses, deprive customers of legitimate choices, boycott suppliers, or fix prices. Trade associations should not advocate for particular bid specifications or product standards that would serve improperly to exclude certain members or non-members from the marketplace.**
 - A trade association's standard-setting activity should be based on legitimate, rational technical or practical grounds.
 - A trade association's specification and certification processes should be open and transparent. Interested parties (including non-members) should have ample notice of these activities and given the opportunity to participate.

TRADE ASSOCIATION ACTIVITY

- * **Activity to petition the Government to take action in a particular way is generally immune from liability under the federal antitrust laws, even if the requested governmental action would restrict competition. Government petitioning by a trade association is generally permitted.**
 - However, there are limits to the immunity provided under the antitrust laws for government petitioning activity. For example, such immunity generally will not apply where that petitioning activity is determined to be sham activity, whose design is to impose costs upon a competitor rather than secure the benefits of governmental intervention.
 - Delta Companies Inc. should not participate in any activity by a trade association to petition for particular governmental action where the requested governmental action is directed toward a particular person or entity, or where the requested governmental action is of a commercial nature, without first seeking advice from Legal Counsel.

- * **Each trade association meeting should have a specific agenda that is strictly followed during the course of the meeting. Also, minutes of each meeting should be prepared that accurately reflect the discussion topics and any action taken by the trade association.**
 - If you attend a trade association meeting where the discussion turns to improper topics, such as current pricing or how rising costs should be handled, you should take express action to confirm your refusal to participate in such a discussion. **Silence can be viewed as acquiescence.** In such a situation, you should advise the group that such a discussion is improper under the antitrust laws and Delta Companies Inc. will not participate in such a discussion. If the discussion continues, you should leave the room in such a manner that others notice your departure. You should immediately advise Legal Counsel if such an event happens.
 - You should review the minutes of all trade association meetings to ensure that they accurately reflect the meetings' content. If they do not, you should ask in writing that the association correct the record and issue amended minutes, and keep a copy of your request. If the association does not issue amended minutes, you should annotate in your file copy of the minutes the correction that needs to be made.

PENALTIES

Penalties for antitrust violations are severe for both a company and its employees.

Criminal: Antitrust offenses are classified as a **felony**. As a practical matter, the government only prosecutes offenses involving agreements among competitors.

The Sherman Act provides for the following penalties. For antitrust offenses committed before June 22, 2004, individuals can be fined up to \$350,000 and sentenced to up to 3 years in federal prison for *each* antitrust violation, and corporations can be fined up to \$10 million for *each* antitrust violation.

For antitrust offenses committed on or after June 22, 2004, individuals can be fined up to \$1 million and sentenced to up to 10 years in federal prison for *each* antitrust violation, and corporations can be fined up to \$100 million for *each* antitrust violation.

Multiple counts of antitrust violations can substantially raise these penalty figures. In addition, under some circumstances, penalties can go even higher than the Sherman Act maximums to twice the gain or loss involved. Remember also that in these cases, prosecutors frequently invoke federal mail and wire fraud statutes, thereby adding to possible criminal fines and penalties.

Civil: A private plaintiff who prevails in an antitrust case under federal or state law is entitled to a **treble damage award**, or three times the amount of damages actually sustained. A civil antitrust plaintiff may also receive court costs and reasonable attorneys' fees.

A FINAL COMMENT ON STRICT COMPLIANCE

Strict compliance with the letter and the spirit of the antitrust laws is an **absolute** requirement for Delta Companies Inc. employees ...

... but this is not enough. You should avoid conduct that could *appear* to constitute a violation of the law. No matter how innocent a particular act may be, legal difficulties can result if it leads others to believe that a violation has occurred.

A few reminders about *appearances* --

- Many of us have close friends who work for competitors, suppliers or customers, and no one is asked to give up these relationships. However, a mutual understanding that there will never be any improper discussion of business matters will avoid problems.
- Conduct that is perfectly proper is sometimes related in writing in such a manner as to appear contrary to the law. Be certain that what you write accurately reflects what has taken place.
- Avoid using colorful language in written documents that might be misinterpreted, such as words like “destroy”; “monopolize”; “dominate”; “crush”; “eliminate”; “squash”; “conquer”; or phrases such as having a “gentlemen’s agreement” or “truce” with a competitor.
- Remember that during antitrust investigations or lawsuits, the Company will be asked to produce employees’ emails (*including draft and deleted emails*), datebooks, phone messages, handwritten notes, and other documents that are not considered the formal correspondence of the Company. Marking a business document “confidential” does not prevent it from being subject to production. **Everything** you write as part of your job with Delta Companies Inc. should be written so that it could read aloud on the national evening news.



Antitrust Compliance Policy

Officer and Employee Certification

I hereby certify that I have read and understand the Antitrust Compliance Policy of Delta Companies Inc. and its subsidiaries, a copy of which has been provided to me.

I further certify that I will comply with and abide by the Policy's provisions during the course of my employment with Delta Companies Inc.

I understand that violations of Delta Companies Inc. Antitrust Compliance Policy will be grounds for disciplinary action, up to and including termination of my employment with Delta Companies Inc.

Signature: _____

Printed name: _____

Date: _____

January 2013