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**U.S. DEPARTMENT OF JUSTICE ANTITRUST PROBE INTO AUTOMAKERS’
AGREEMENT WITH THE CALIFORNIA AIR RESOURCES BOARD**

Associations should take note of a recent and ongoing antitrust investigation by the U.S. Department of Justice (DOJ) into alleged, concerted activity by four automakers with the California Air Resources Board (CARB), an agency of the State of California. It is not uncommon for associations and their members jointly to discuss issues of concern with federal or state government legislators and regulators, so this probe by the DOJ is noteworthy.

U.S. Supreme Court precedent, known as the *Noerr–Pennington* doctrine, generally provides that private entities are immune from antitrust liability for attempts to influence the passage or enforcement of laws or government regulations, subject to limited exceptions. The DOJ antitrust probe is focused on whether the automakers – by coming to an agreement with CARB regarding fuel emissions regulations – colluded amongst each other to restrain trade by limiting the types of cars consumers can purchase.

The *Noerr–Pennington* doctrine applies to government activity, not private standard setting. Therefore, regarding compliance with voluntary industry standards, association members should make unilateral business decisions rather than reaching any agreements with their competitors.

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