

IETF Antitrust BOF: Legal Overview

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Paris

Antitrust and Competition Laws

- Exist in most countries
 - Rules generally consistent in most major areas
- Prohibit agreements that unreasonably restrain trade (including discussions potentially leading to such agreements)

Horizontal and Vertical Agreements

- Horizontal agreements among competitors receive greatest scrutiny
- Vertical agreements often reviewed under “rule of reason”
- Standards groups raise particular issues given the large number of competitors in close proximity and large amount of market share represented

Generally Prohibited Activities

- Agreements among competitors (horizontal) to:
 - Fix Prices
 - Restrict output
 - Allocate customers or territories
- Standards-specific activities:
 - Prohibition on adopting competing standards
 - Excluding technology/participants for

Sharing Competitive Information

- Sharing competitive information can be viewed as a precursor to collusion
- Competitive information includes:
 - pricing strategy/plans
 - non-public E&P plans
 - merger plans
 - non-public financial information/projections
 - Internal costs, budgets
 - Procurement and purchasing plans

Cases involving SDOs

- Abuse of Process
 - American Society of Mechanical Engineers v. Hydrolevel Corp (1982)
 - Allied Tube & Conduit v. Indian Head (1988) (NFPA)
- Exclusion
 - Addamax Corp. v. Open Software Foundation Inc. (1995)
 - True Position v. ETSI, 3GPP (2011)
- Certification

What Other SDOs have Done

1. Nothing
2. Antitrust FAQ
3. Formal Education (WG Chairs, etc.)
4. Warnings/Cautionary Slides (see appendix)
5. Formal Policy Restrictions

Considerations

- Legal protection of IETF
- Promotion of good behavior
- Awareness-raising in Community

Standards Development Organization Advancement Act of 2004

- Part of Natl. Cooperative Research and Production Act of 1993 (15 USC 4301-06)
- Automatically applies “rule of reason” analysis to SDOs
- Allows recovery of attorneys’ fees by SDOs that are sued for antitrust violations
- If SDOs file Federal Register notification listing all parties, eliminates antitrust treble damages
 - But questions have been raised about IETF eligibility

Sample SDO Antitrust Slides

Other Guidelines for IEEE WG Meetings

- **All IEEE-SA standards meetings shall be conducted in compliance with all applicable laws, including antitrust and competition laws.**
 - **Don't discuss the interpretation, validity, or essentiality of patents / patent claims.**
 - **Don't discuss specific license rates, terms, or conditions.**
 - Relative costs, including licensing costs of essential patent claims, of different technical approaches may be discussed in standards development meetings.
 - Technical considerations remain primary focus
 - **Don't discuss or engage in the fixing of product prices, allocation of customers, or division of sales markets.**
 - **Don't discuss the status or substance of ongoing or threatened litigation.**
 - **Don't be silent if inappropriate topics are discussed ... do formally object.**

See IEEE-SA Standards Board Operations Manual, clause 5.3.10 and "Promoting Competition and Innovation: What You Need to Know about the IEEE Standards Association's Antitrust and Competition Policy" for more details.

VSO Meeting Rules of Conduct

- **Do NOT Discuss Prices**
- **Do Disclose Essential Patents**
- **Do NOT Present Restricted Information**
 - Remove “restricted information” claims from slides
- **Observe ITAR Regulations**
 - VITA Does NOT create standards for specific military programs
 - Therefore, DO NOT discuss the requirements for a proposed standard as needed by a specific military program.
- **Do Observe Copyright Laws**
 - Be especially careful about using one standard group’s slideware in another group’s meeting
 - Please ask before using

BICSI Standards Antitrust Reminder

- BICSI activities are a coordinated effort among competitors in the information transportation systems industry.
Accordingly, every effort must be made to avoid even the appearance of impropriety.
- Do NOT discuss or participate in topical areas such as:
 - Pricing, purchasing, or marketing of either a company or of a specific products
 - Industry or customer allocation, production, or capacity
 - Matters relating to actual or potential corporate entities that might provide undue bias or influence towards said entity's business and/or their marketplace
- If any participant has a question as to the legality of

Southwest Power Pool (SPP) Antitrust

- Pricing information, especially margin (profit) and internal cost.
- Information and participants' expectations as to their future prices or internal costs.
- Participant's marketing strategies.
- How customers and geographical areas are to be divided among competitors.
- Exclusion of competitors from markets.
- Boycotting or group refusals to deal with competitors, vendors or suppliers.
- No decisions should be made nor any actions taken during SPP activities for the purpose of giving an industry participant or group of participants a competitive advantage over other participants.

Southwest Power Pool (SPP)

Antitrust Guidelines

Permitted Discussions

- Reliability matters relating to the bulk power system, including operation and planning matters such as establishing or revising reliability standards, special operating procedures, operating transfer capabilities, and plans for new facilities.
- Matters relating to the impact of reliability standards for the bulk power system on electricity markets, and the impact of electricity market operations on the reliability of the bulk power system.
- Proposed filings or other communications with state or federal regulatory authorities or other governmental entities.
- Matters relating to the internal governance, management and operation of SPP, such as nominations for vacant committee positions, budgeting and assessments.
- Procedural matters such as planning and scheduling meetings.