

Anti-trust/Competition Law Considerations for JCP

Why EC Members Must Care

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Standards Setting Organizations (SSOs)

Initially (from late 1800s)

- Only big I Standards Development Organizations (SDOs)
- ISO, IEC & ITU

Consortia allowed under US law in late 1980s

- Thousands of consortia
- Characteristics vary widely: governance, business models, membership, ...

Other geographies handle in various ways

But ALL SSO participants must abide by Anti-Trust/Competition Laws

- Reminder/refresher for JCP EC members

JCP Program Reference

The JCP Process Document makes reference to Anti-trust laws in section 3.7.3:
<https://jcp.org/en/procedures/jcp2#3.7.3>

Members of the Executive Committee should be dedicated to the principles of full and open competition, in full compliance with all applicable laws, including all antitrust laws of the United States and other nations and governmental bodies as appropriate. Violations of such laws can result in criminal as well as civil penalties for individuals as well as employers, depending on the jurisdiction. In particular, any discussion related to product pricing, methods or channels of distribution, division of markets or allocation of customers, among other subjects, should be avoided.

Oasis-Open Antitrust Guidelines

OASIS is a not-for-profit consortium that drives the development, convergence and adoption of open standards for the global information society. OASIS is not intended to, and may not, play any role in the competitive decisions of OASIS members, or in any way restrict competition in OASIS member industries. It is the policy of OASIS to comply with all antitrust and competition laws and regulations.

Those participating in OASIS activities at all levels, including Technical Committees, Subcommittees, Project Teams, Steering Committees, Board of Directors, etc., need to proceed with caution to ensure against inadvertent violations of international, federal or state/province antitrust and competition laws, because violations of such laws can result in criminal as well as civil penalties for individuals as well as their employers. Laws relating to antitrust and anticompetitive behavior are complex. You should seek to further understand these issues. If you are an employee of a corporate OASIS member your company may have materials to explain them to you.

OASIS members acknowledge that they may compete with one another in various lines of business and that it is therefore imperative that they and their representatives act in a manner that does not violate any applicable antitrust or competition laws and regulations. Each OASIS member may design, develop, manufacture, acquire or market competitive specifications, products and services, and conduct its business in whatever way it chooses. OASIS members participating in OASIS activities may not have any discussion relating to product pricing, methods or channels of product distribution, any division of markets, or allocation of customers or any other topic that should not be discussed among competitors. It is each OASIS member's responsibility to obtain appropriate legal counsel regarding their conduct in OASIS and compliance with applicable antitrust or competition laws and regulations.

REMEMBER: Both your company and you as an individual can be prosecuted for violations of antitrust and anticompetition laws.

Approved by OASIS Board of Directors: 8 February 2008.

International Committee for IT Standards (INCITS)

INCITS Antitrust Guidelines

ITI counsel developed the INCITS Antitrust Guidelines for the protection of INCITS and INCITS Subgroup members on antitrust issues. INCITS and INCITS Subgroup members must follow the INCITS Antitrust Guidelines.

Anticipate Risks

INCITS and INCITS subgroup meetings must be conducted in a manner that avoids the appearance of conduct which might violate the antitrust laws. The harsh criminal penalties in the antitrust laws, for individuals as well as organizations, the high costs of defending antitrust suits, the diversion of resources from our important missions, and the risk of liability together mandate an understanding of, and respect for, the antitrust laws by INCITS and its members. Our objective is to create a climate where antitrust risks are both anticipated and avoided.

Consult Counsel

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Notice and Agenda

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Conduct of Meetings

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Minutes of Meetings

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Sensitive Topics

With rare exceptions that should be made only upon the advice of INCITS counsel, there should never be discussion of the following topics at any INCITS or an INCITS subgroup meeting:

- Any company's prices or pricing policies;
- Specific R&D, sales and marketing plans;
- Any company's confidential product, product development or production strategies;
- Whether certain suppliers or customers will be served;
- Prices paid to input sources; or
- Complaints about individual firms or other actions that might tend to hinder a competitor in any market.

Standards

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Educational Presentations

Sharing non-proprietary information among competitors is generally lawful. Discussion should be limited to objectives, which promote overall consumer welfare. Exchanging proprietary information may not be appropriate, if the purpose or effect of the exchange is to lead to diminished competition in the marketplace.

Antitrust and Competition Policy What You Need to Know

Promoting Competition and Innovation

Antitrust and competition laws throughout the world rest on the premise that competition in the provision of products and services is the best way to ensure that consumers and other users receive maximum innovation and quality at the lowest possible prices. But sometimes effective competition requires a measure of cooperation among competing firms.

Standards development is one of those areas. Standards development serves one part of the IEEE mission—advancement of global prosperity by fostering technological innovation—but it can do so only if the standards development is conducted consistent with the antitrust and competition laws that regulate the nature and extent of cooperation in which competitors can legitimately engage.

The IEEE Standards Association (IEEE-SA) is an international membership organization that provides a standards program serving the global needs of industry, government, and the public. A violation (or claims of violation) of competition laws will jeopardize what all participants are working so hard to build; will impede the IEEE mission; and may expose participants and their employers to the risk of imprisonment and other criminal penalties, civil remedies, and significant litigation costs. Even if a competition-law case or investigation is ultimately dropped, that will often happen only after the parties have spent considerable resources in responding to information requests and defending against the claims.

The IEEE-SA wants to help all of its participants avoid competition-law problems. Many IEEE-SA participants receive antitrust/competition-law compliance training from their employers, and IEEE-SA participants should always consult with their own or their company counsel when they have competition-law questions. This brochure is not intended to replace that competition-law training, advice, or other competition-law resources that participants may have available to them; rather, this brochure is intended to highlight the competition-law risks that are most pertinent to standards development and to explain IEEE-SA policies with respect to competition law matters.

Standards development serves to advance global prosperity... but it can do so only if the standards development is conducted consistent with the antitrust and competition laws.

standards.ieee.org

<http://standards.ieee.org/develop/policies/antitrust.pdf>

IANAL

Consult your Counsel about Anti-Trust
and Competition Laws

Thank you!

<http://jcp.org>