

ANTITRUST COMPLIANCE POLICY
of the
OPEN-IX ASSOCIATION

All Members or Participants taking part in any Open-IX Association activities, including, without limitation, standards development and certification review and approval, are required to follow this Antitrust Compliance Policy strictly and without exception.

I. Basic Principles

The fundamental purpose of the Open-IX Association is to develop, adopt and promote the implementation of voluntary standards to improve data exchange efficiencies and complexities, improve product information quality, and support the development of Internet Exchange Points and Interconnection. The Association's membership is comprised of a representative cross-section of industry leaders who, working under the auspices of the Association, contribute to the development and adoption of such standards, so that they then may be implemented by companies or other entities providing services in the relevant market(s), and certified by the Association as such.

The central goal of the Association is to improve competition and facilitate competitive practices. Adherence to this Antitrust Compliance Policy will facilitate that purpose and is required.

Antitrust principles relating to standards development: As a standards development consortium, Open-IX is committed to using procedures for standards development that incorporate openness, balance of interests, voluntary consensus, transparency, due process, and an appeals process. In addition to these requirements, Open-IX seeks to ensure that all participants in standards development activities conduct their activities in good faith to promote a fair, open, collaborative and unrestricted process for considering and adopting standards.

It is the policy and practice of the Open-IX Association to conduct all of its meetings and activities in strict compliance with applicable federal and state laws. Because participants in the Association are often competitors, it is particularly important to comply fully with federal and state antitrust laws. These laws seek to preserve and promote competition and to deter anticompetitive conduct.

Strict compliance is required: Participants in the Association are required to comply strictly with all applicable federal and state antitrust laws and to avoid any appearance of improper or anticompetitive conduct. To help ensure such compliance, counsel for the Association may review agendas, key action items, handouts and slide presentations in advance of all meetings; review meeting Minutes in advance of distribution; and be present, as requested, to monitor Association meetings. Members and Participants are strongly urged to consult with their own (company's) counsel for legal advice concerning

documents a company wishes to disseminate, presentations made by company officials, and other pertinent issues. Persons with questions regarding what is, or is not, permitted under antitrust laws should consult counsel before behaving in a manner that may violate, or create the perception of a violation of, the antitrust laws.

Violations of the law and penalties: Violations of the antitrust laws can result in serious penalties for both companies and individuals – and standards development consortia such as the Association are not exempt. These penalties include treble damage awards, heavy fines and injunctions. Individuals may be subject to imprisonment. It is therefore incumbent upon everyone participating in any Association activities to avoid subject areas and discussions which might be construed as anticompetitive.

II. Prohibited Communications/Conduct

All communications and/or conduct relating to the following subjects, by any participant in the Open IX-Association and anyone making presentations to the Association, in his/her Open-IX-related activities, are ***prohibited*** as a matter of Association policy and in accordance with the law:

1. Prices – one’s own or those of a competitor – or any factors which might affect prices such as discounts or margins, and terms and conditions of sale.
2. Profits, profit margins or cost data of one’s own, or those of a competitor.
3. Any subject that might lead to any agreement to raise, lower or hold present or future price levels.
4. Allocation of territories, markets or customers.
5. Restrictions on production, boycotts or refusals to deal.
6. Selection, rejection or termination of customers or suppliers.
7. Any subject or conduct at social events incidental to Association meetings or other events that would not be proper at the meetings/events themselves.

All discussions during Association meetings must be limited to agenda items that Association counsel has reviewed and approved.

If a subject with any anticompetitive implication or appearance is raised at any Association meeting, persons attending the meeting should object and request that the subject be dropped.

During Open-IX meetings, and in any other Open-IX-related communications, Members and Participants are prohibited from discussing any of the following:

- Prices
- Profits or profit margins
- Bids
- Future business (including R&D, sales and marketing plans)
- Transactions with customers
- Market shares or sales territories

- Any competitively sensitive information of the Member or Participant
- Any matter which restricts the Member or Participant's independence in conducting its business.

It is a per se violation of the antitrust laws – that is, without possibility of recourse to a defense of justification, such as, for instance, business efficiencies – to discuss or reach any agreement, implicit or explicit, regarding pricing, bids, allocation of markets or allocation of territories, and any such agreement can lead to civil or criminal liability.

Each Member and Participant should act independently when reaching any Association-related decision, including any Member votes on any standard. Group boycotts or concerted refusals to deal with a third party are impermissible.

Open-IX Members or Participants may not share competitively sensitive information they have learned regarding one Member or Participant with another Member or Participant, including prices, business plans, contents of bids and details of customer transactions. In no event should Association Members or Participants be given access to the prices or similarly competitive information of any other Member or Participant (i.e., of the company or entity by which they are employed).

III. Particular Antitrust Issues Relating to Standards Development

Standards development activities raise particular potential antitrust concerns of which Members and Participants should make themselves aware. Generally, standards should:

- Be adopted only after a full and thorough opportunity for public comments;
- Not arbitrarily exclude competitors;
- Focus on technical and operational factors.

When participating in Open-IX standards development activities, Members and Participants should not do any of the following:

- Propose or attempt to promulgate or influence the adoption of Open-IX standards for the purpose of gaining competitive advantage or excluding other competitors;
- Use or develop an Open-IX standard as a means to exclude others from competing or as a means to limit competition;
- Take action with an intent to unfairly exclude others from the standards development process.

IV. Checklist Review: Affirmative Obligations, Prohibitions and Notes

- 1) DO keep this Policy in mind, and adhere to it, as you prepare day-to-day e-mail messages, business correspondence, notes, and memoranda. Even the most casual internal documentation and e-mail messages may be subject to discovery by government enforcement agencies or private parties in antitrust litigation and may be misinterpreted and used against

the Association and/or its Members or Participants. When matters arise related to any of the subjects discussed in this Policy, consult with Association counsel and, if necessary, an appropriate member/members of the Board in advance to determine how to prepare the necessary documentation.

- 2) DO participate in standards setting activities in good faith and with an interest towards promoting efficiency in Internet Exchange Points and Interconnection.
- 3) DO propose and consider Open-IX standards based on objective criteria that are intended to promote efficiency in Internet Exchange Points and Interconnection.
- 4) DO limit your communications among competitors who are Members or Participants in Open-IX to issues directly relating to the Association and comply with any rules promulgated by the Association regarding communications among competitors.
- 5) DO NOT take any action that is intended to make a standard a means for excluding (or that has the effect of excluding) any interested party from competing in the market(s) for Internet Exchange Points and Interconnection.
- 4) DO NOT take any action that is intended to unfairly exclude or that has the effect of unfairly excluding any interested party from participating in any portion of the Association's standards development process.
- 5) DO NOT make statements – orally or in writing – that suggest that Open-IX requires the exclusive use of any Association standards in transactions between Members or Participants and their trading partners.
- 6) DO NOT make statements – orally or in writing – that suggest that the use of Open-IX standards is mandatory or a pre-condition to offering products or services that may be covered by or related to such standards.
- 7) DO NOT discuss any competitively sensitive information with other Open-IX Members or Participants, including, without limitation, pricing, profit, customer, competitor, market, distribution, sales or marketing information.
- 8) DO NOT write or say anything that might be taken as an expression of intent to capture a dominant share of the market or to drive competitors out of business.

- 9) DO NOT provide Open-IX counsel with any confidential or sensitive information that does not relate solely to the Association. Open-IX counsel represents the Association only, and does not represent any Association Member or Participant acting in his or her non-Association capacity. No attorney-client privilege attaches to communications between Open-IX counsel and Association Members or Participants with respect to their non-Association-related conduct and communications.
- 10) DO NOT use words suggesting or implying that use of Open-IX standards is a matter of “industry agreement” or “industry policy” rather than as a matter of self-interest and independent judgment of the Association itself and/or any company or entity that seeks and/or obtains certification by the Association with respect to its standards.

V. Modification

This Policy is subject to modification as necessary and all Members and Participants are required to adhere to it, including any modifications, upon dissemination of the latest version of the Policy.

February 2014