



## **Antitrust Guidelines**

The Open Group is a vendor and technology neutral consortium whose members, consisting of customer, supplier, government, and academic organizations, participate in a variety of Forums and Work Groups to collaborate on the development of standards, best practices, and certifications. The Open Group Meetings include General Membership, Forum, and Work Group sessions and related activities.

## **Guidelines for The Open Group Meetings**

For the purposes of these Guidelines, the term "Forum/Forums" shall include Work Groups. To ensure that the antitrust laws are not violated and that there is no appearance that anticompetitive activity is taking place, every participant in The Open Group Meetings and activities must adhere to the following guidelines:

### **1. Keep in mind the pro-competitive purposes of The Open Group Forums and participate only in discussions that further those purposes.**

Free and open discussion on matters of concern to the industry is essential to the success of the Forum activities. Discussions among the Forum members should, however, be limited to matters that appropriately advance the Forum's purposes.

### **2. Avoid any discussion of matters pertaining to the way your company competes, including discussions of any member or non-member company's prices, services, customers, costs, or non-public future plans.**

Discussions with competitors concerning commercial or competitive matters always carry a significant antitrust risk. Even if those discussions are not unlawful in themselves, they may be used later to suggest that The Open Group or its members had an implicit antitrust purpose. In particular, there should be no discussions at Forum meetings of any matters involving:

- Prices, or other commercial terms and conditions, with respect to any product or service
- Service levels or quotas
- Specific customers, competitors, or markets, including any customers or areas as to which sales should or should not be made
- Information concerning any individual company's costs, profits, inventory, pricing formulas, market share, or other commercial information of a non-public nature

If you become aware of any such discussions, you should stop the discussion until the matter can be reviewed with counsel. If the conversation continues, excuse yourself. Report any such conversations to The Open Group's or your company's counsel.

### **3. Do not engage in any "off the record" discussions or "bull sessions" concerning sensitive matters pertaining to the way in which your company competes or otherwise does business**

Substantive discussions should be limited to formal meetings at which counsel or a member or staff representative attuned to antitrust issues is present. Informal discussions of the type that could take place outside a formal meeting often raise the most serious antitrust problems. No substantive discussion should take place in small groups or "bull sessions" outside a formally constituted Forum meeting.

#### **4. Official minutes of the Consortium's meetings must be accurate and complete**

As the official record of the Forum proceedings, minutes of the meetings are potentially of great legal significance. They should accurately and briefly summarize the discussion, describe any actions taken and give the reasons for those actions. The Chairman of each committee should take responsibility for assuring that minutes of meetings are clear, concise, accurate and complete. Any questions about the minutes should be raised with antitrust counsel before they are circulated to the members.

#### **5. Do not disparage other companies or their products and services**

Members should not take actions that could be construed as expressing an agreement to exclude or discriminate against any company, whether or not it is a member of The Open Group.

#### **6. If you are in doubt about any activity in connection with a meeting of The Open Group, consult The Open Group's or your company's counsel**

No guide can fully delimit the scope of permissible and impermissible activities under the antitrust laws. Counsel should be consulted whenever a matter appears to raise antitrust concerns.

### **Standard-Setting Activities**

In the course of its activities, The Open Group Forums will be considering technical and other standards. Such standard-setting activity is permitted by the antitrust laws, which recognize that developing standards is an important and legitimate function of industry groups. By eliminating unnecessary incompatibility of products and services, or improving the safety and efficiency of equipment, standards can benefit both the providers and the users of those products and services. Standards must, however, be developed and implemented carefully to assure their compliance with the antitrust laws. In particular, standards should:

- Be advantageous to those who adopt them and their customers
- Be voluntary. There should never be any agreement or pressure to influence individual companies to adhere to uniform standards; rather, each company should be free to decide on its own whether to adopt or reject the standard
- Be set in a process which is fair, open, and representative
- Not arbitrarily exclude competitors or reduce output in a market
- Focus on technical and operational factors and avoid unnecessarily addressing commercial factors. If companies compete based on a difference that will be eliminated by a standard, the standard should be reviewed closely by antitrust counsel before it is adopted

### **Exemptions from the Antitrust Laws**

There are immunities from and exemptions to the antitrust laws, which may apply in some circumstances to activities of The Open Group and its members. Antitrust exemptions can be narrowly construed, and their application to specific conduct generally raises significant questions of law and fact. Therefore, if activity is of the type to raise antitrust concerns, it should never be simply assumed that an exemption applies. Rather, the issue should be raised with counsel.

### **OMB Circular A-119**

The Open Group adheres to U.S. OMB Circular A-119 policies on federal participation in the development and use of voluntary consensus standards and follows the criteria set for such participation (i.e., openness, balance of interest, due process, an appeals process, and consensus) in the development of its standards.