

Open Grid Forum, Inc Antitrust Guidelines

BACKGROUND

The Open Grid Forum (“Forum”) intends to conduct its affairs in compliance with the antitrust laws of the United States and, as applicable, the antitrust laws of the states within the United States and the antitrust/competition laws of other countries (generally, “Antitrust Laws”). The Antitrust Laws are intended to preserve and promote free, fair and open competition. This competition benefits consumers and companies that are innovative and efficient.

Certain types of activities conducted by industry participants may be subject to scrutiny under antitrust laws as being anti-competitive and a violation of the Antitrust Laws can have serious consequences for the Forum and for participating companies. In order to minimize exposure of the Forum and its Members to antitrust liability, the Forum and each Member or Participant (for purposes of this Antitrust Guideline, a “Member”) agree to abide by the following guidelines when participating in connection with activities of the Forum.

Prior to any and all meetings of the Forum, or subgroups thereof, the Members and any other participants in that meeting shall be reminded of these guidelines and their obligation of compliance herewith.

GUIDELINES

1. Neither the Forum nor its committees and activities shall be used for the purpose of bringing about or attempting to bring about any understanding or agreement, written or oral, formal or informal, express or implied, between and among competitors with regard to their prices, terms or conditions of sale, distribution, volume of production, territories, customers, credit terms or marketing practices.
2. In connection with participation in the Forum, there shall be no discussion, communication, agreement or disclosure among Members that are actual or potential competitors, regarding their prices, discounts or terms or conditions of sale or licensing of products or services, pricing methods, profits, profit margins or cost data, production plans, market shares, sales territories or markets, allocation of territories or customers, or any limitation on the timing, cost or volume of their research, production or sales.
3. The Forum and Members, in connection with their participation in the Forum, shall not attempt to prevent any person from gaining access to any market or customer for goods and services, or attempt to prevent any person from obtaining a supply of goods or services or otherwise purchasing goods or services freely in the market. (This paragraph is not intended to preclude the Forum or a Member from disclosing and asserting its intellectual property rights.)
4. The qualifications for Membership in the Forum are set forth in the Corporate Documents of the Forum. No applicant for Membership, who otherwise meets the qualifications set forth therein, shall be rejected for any anti-competitive purpose or for the purpose of denying such applicant the benefits of Membership.
5. Each Participant in the Forum is obligated and expected to exercise its independent business judgment in pricing its services or products, dealing with its customers and suppliers, and choosing the markets in which it will compete.

6. To the extent that the Forum develops, administers or approves guidelines, standards, specifications, test procedures, or certification programs, a Member's decision to accept or comply to or participate therein shall be voluntary on the part of Members, and shall in no way be compelled or coerced by the Forum. Adherence to Deliverables or implementations shall be voluntary on the part of the Members of the Forum. This guideline shall not, however, prevent the Forum from adopting testing and certification programs and/or mandatory product compliance and robustness regimes for companies choosing to implement the specifications as well as logo and trademark usage requirements tied to adherence with the Forum's guidelines, standards, specifications, test procedures or certifications programs.
7. Deliverables and sample implementations which may be developed, administered, approved, or adopted by the Forum, shall be based upon appropriate technical, business and consumer considerations, and shall not be based upon any effort or purpose to reduce or eliminate competition in the sale, supply and furnishing of products and services.
8. The Forum may condition use of its trademark(s), and other intellectual property, on compliance with terms and conditions developed to regulate the use of and to protect such mark, and otherwise to maintain and enforce a compliance certification program in accordance with agreed terms and conditions and in conformity with the antitrust laws. Such terms and conditions may include a requirement of adherence with the Forum's guidelines, standards, specifications, and test procedures or certifications programs. The Forum also reserves the right to take appropriate action against any person or entity which engages in false or misleading advertising regarding the use of or compliance with guidelines, standards, specifications, or test procedures of the Forum or with the Forum's certification program.
9. During the course of the activities of or sponsored by the Forum, Members should refrain from disclosing information to any other Member that is not reasonably related the legitimate purposes of such activities.
10. The Forum and its Members, in connection with their participation in the Forum, shall not enter into any agreement or understanding among themselves to refrain, or to encourage others to refrain, from purchasing any raw materials, product, equipment, services or other supplies from any supplier or vendor or from dealing with any supplier or vendor.
11. Nothing in the Forum's Bylaws, IPR Policy or other document or policy shall be construed as restricting the right of any Member or participant of the Forum to independently design, develop, acquire, manufacture, market or service or otherwise deal in, directly or indirectly, competitive products or services independent of any items developed or delivered by members, participants or the Forum.
12. To the extent that it furthers the purposes of the Forum, as set forth in its Corporate Documents, joint research and development by two or more of its members and/or participants and/or representatives thereof shall be permissible, provided that such joint research and development for the Forum shall be organized and conducted in a manner consistent with antitrust and other legal requirements, and in particular shall exclude the following activities:
 - a. the exchange of information among competitors relating to costs, sales, profitability, prices, marketing or distribution of any product, process, or service that is not reasonably required to conduct the research and development;
 - b. any agreement or any other conduct restricting, requiring, or otherwise involving the production or marketing by Member or any other member and/or participant of the Forum of any product, process or service, other than the production or marketing of proprietary information developed through such joint research and development, such as patents and trade secrets; and

- c. any agreement or any other conduct restricting or requiring the sale, licensing or sharing of inventions or developments not developed through such joint research and development, or restricting or requiring participation by Member or any other Member and/or participant of the Forum in other research and development activities, that is not reasonably required to prevent misappropriation of proprietary information contributed by Member or any other Member and/or participant of the Forum, or representative thereof, or of the results of such joint research and development.
13. The Forum and each Member, in connection with the activities of the Forum, shall use their best reasonable efforts to comply in all respects with the Antitrust Laws.
 14. These Guidelines are conservative and intended to promote compliance with the Antitrust Laws, not to create duties or obligations beyond what the Antitrust Laws actually require. In the event of inconsistency between these Guidelines and the Antitrust Laws, the Antitrust Laws shall control.
 15. These Guidelines shall be promulgated to all Members in the Forum. All Members shall abide by these Guidelines.

Duly adopted by the Board of Directors of Open Grid Forum on _____, 2006.