WS-I Antitrust Compliance Policy

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WEB SERVICES-INTEROPERABILITY ORGANIZATION

ANTITRUST COMPLIANCE POLICY

The purpose of the Web Services-Interoperability Organization ("WS-I") is the creation, promotion, and support of generic protocols for interoperable exchange of messages between services. As used herein, "generic protocols" means protocols that are independent of any specific action indicated by the message beyond actions necessary for the secure, reliable, or efficient delivery of messages. As used herein, "interoperable" means suitable for and capable of being implemented in a neutral manner on multiple operating systems and in multiple programming languages. WS-I is not intended to, and will not, play any role in the competitive decisions of its participants or in any way restrict competition in any markets whatsoever.

It is the express policy of WS-I to require that all of its activities be conducted strictly in accordance with U.S. federal and state antitrust laws and foreign antitrust laws. It is extremely important that all members of WS-I be aware of the types of activities prohibited by antitrust laws. This Antitrust Compliance Policy (the "Policy") was prepared to familiarize you with areas of law that you should know about in order to maintain compliance with antitrust laws. However, you should note that this Policy is a general guide only; it is not intended to be a complete and definitive statement of all aspects of the antitrust law. The penalties for violating antitrust laws can be quite severe, including large fines and even imprisonment of individuals found guilty of illegal conduct. Moreover, the U.S. Supreme Court has ruled that trade and other non-profit consortia may be held legally responsible for the unauthorized, as well as authorized, acts of its members. Accordingly, every effort must be made to avoid even the appearance of impropriety. While legal counsel may be present at meetings, each member has the responsibility in the first instance to avoid raising subjects for discussion that may run afoul of the antitrust laws.

This Policy has been prepared to ensure that members of WS-I are aware of this obligation. Any specific questions relating to antitrust compliance not addressed in this Policy should be forwarded to counsel for WS-I or your own legal counsel who has responsibility for considering the antitrust implications of the business activities in question. The purpose of such consultation is to give counsel the opportunity to assess the permissibility of a practice in advance and to allow members to gain the advantage of counsel's advice. Any error may be very costly to the member and to WS-I.

I. THE ANTITRUST LAWS

Broadly stated, the basic objective of the antitrust laws is to preserve and promote competition and the free enterprise system. These laws are premised on the assumption that private enterprise and free competition are the most efficient ways to allocate resources, to produce goods at the lowest possible price and to assure the production of high quality products. The success of WS-I requires that free and open competition be adhered to as the policy of WS-I and that all WS-I members follow this policy.

A. Antitrust Laws Applicable to Activities of Technology Consortia

The U.S. antitrust statutes of principal concern to companies and individuals that take part in industry consortia activities are Section 1 of the Sherman Act and Section 5 of the Federal Trade Commission ("FTC") Act. These laws make illegal all contracts, combinations, and conspiracies which unreasonably restrain trade.

A number of states in the United States have laws that address antitrust and fair trade matters and activities of WS-I may be subject to such laws. Finally, many nations have competition laws that are similar to the antitrust laws of the U.S. The competition laws of the European Union ("E.U.") largely mirror U.S. law and are vigorously enforced by the E.U.'s competition authorities. However, some foreign jurisdictions have laws that differ greatly from U.S. laws. In all cases, WS-I and its members should be sensitive to the risk that their actions may implicate the laws of a number of jurisdictions.

In the United States, some activities are regarded as unreasonable by their very nature and are, therefore, considered illegal "per se." Practices within the "per se" category include naked agreements between competitors to fix prices, agreements to boycott competitors, suppliers or customers, and agreements to allocate markets or limit production. However, agreements made in connection with the activities of a bona fide joint venture or intellectual property licensing agreement (which are therefore not regarded as "naked" restraints on trade) are not considered illegal "per se." Instead, in these cases a court will examine all the facts and circumstances surrounding the conduct in question to determine whether the agreement unreasonably restrains trade under the "rule of reason." Courts generally apply the rule of reason to technology joint ventures, standard-setting and certification activities such as WS-I.

B. Penalties for Violations

The U.S. antitrust laws are enforced at the federal level by the Antitrust Division of the Department of Justice and the Bureau of Competition of the Federal Trade Commission. A criminal conviction for an antitrust law violation may result in severe fines for WS-I and its members, jail sentences for individuals (including an individual acting in his or her capacity as a corporate employee or officer) who participated in the violation, and a court order disbanding WS-I or severely limiting its activities. These penalties are not limited to US citizens or companies. In the past, several foreign nationals have been sentenced to serve jail time in the U.S., and corporations convicted of such a criminal offense have been fined hundreds of millions of dollars. The government may also seek injunctions and civil penalties. In addition, private persons or firms may sue for damages under the federal (U.S.) laws and a company found liable may be required to pay up to three times the actual damages suffered by the private party, as well as all of the plaintiff's costs of litigation and attorneys' fees.

II. DETAILED DISCUSSION

From a practical standpoint, WS-I and its members should focus their greatest concern on the following principal antitrust problem areas:

A. Adoption of Protocols and Certification Processes

Great care must be taken in the setting of protocols and certification of compliance with such protocols.

When members of a consortium submit technology and vote on that technology in order to develop generic or standardized protocols, there is the potential for one company, or a group of companies, to act in ways that unreasonably restrict competition. In order to minimize the risk of antitrust liability, protocols should be adopted on the basis of sound technical and business justifications. Such technical and business justifications must exist at the time of adoption. They must also be voluntary in that there be no agreement to compel compliance with such protocols or to compel a reduction in the number of available products that do not conform to such protocols. They should be adopted under fair, reasonable and non-discriminatory procedures in conformance with WS-I's bylaws.

Protocols adopted by WS-I should be made publicly available. To the extent that WS-I certifies technology, software, products or processes as meeting certain protocols (whether or not such protocols have been adopted or developed by WS-I), the standards against which compliance is measured should be publicly available. Any certification process must be fair, open to non-members, and free of any unreasonable burdens or costs on non-members WS-I should certify any process or product that meets the protocol at issue (unless there are legitimate justifications for not doing so). WS-I members should be guided by both the letter and the spirit of the established procedures, which are designed to ensure that adoption of protocols are open to interested parties and based upon objective technical and business factors.

B. Price-Fixing

As noted above, naked price-fixing is illegal per se. The government strictly enforces the price-fixing prohibitions of the Sherman Act. To avoid the risk of liability, WS-I members should not discuss prices, pricing systems, or discounts, at consortium meetings or informal meetings before or after an organizational meeting, when members get together socially.

Although a prohibition on even the discussion of pricing may appear severe, it is a prudent policy, since it is in the best interest of the members to avoid even the appearance of impropriety. A formal agreement on prices is not necessary for a finding of antitrust liability. Antitrust cases often are proven by circumstantial rather than direct evidence. Although there may be perfectly innocent explanations for business conduct, antitrust enforcement agencies, judges or juries may interpret contacts with competitors followed by similarity in conduct (such as similar pricing) as circumstantial evidence of an "agreement." It is, therefore, of the utmost importance to avoid any contacts with competitors that might support an inference of agreement on price. That means a member's relations with competitors should always be conducted as if they were at all times in the public view.

Members should also be aware that the antitrust prohibition on price-fixing is extremely broad. Price fixing includes any combination between competitors formed for the purpose and with the effect of raising, depressing, fixing, pegging or stabilizing prices.

Competitors may violate this law if they:

- agree on the range within which purchases or sales may be made;
- agree that prices charged or paid are to fall within any sort of formula;
- agree to fix or stop giving discounts; or
- agree to artificially increase or limit supply.

Because price-fixing is illegal per se, it is not a defense that the prices set are reasonable. Nor is it necessarily a defense that competitors fixed maximum prices, rather than minimum prices.

Although the discussion thus far has focused on so-called "horizontal" price fixing -- that is, agreements among competitors selling the same or similar products -- it is also illegal to engage in "vertical" price fixing: an agreement to fix the price at which a purchaser will resell a product. Where a product is sold for resale, the seller is permitted to suggest resale prices to customers, but any agreement, whether formal or informal, express or implied, must be avoided.

C. Agreements To Allocate Markets

An agreement among competitors to allocate markets or customers is, in the absence of a legitimate joint venture or intellectual property license, an antitrust violation. The antitrust laws expressly prohibit any understanding or agreement between competitors or members of an association involving division or allocation of geographic markets or customers, or an agreement to divide sales by product type. Even an informal agreement whereby one member agrees to stay out of another's territory may constitute a violation of the antitrust laws.

D. Concerted Refusals to Deal

Members should avoid participating in "concerted refusals to deal," more commonly known as boycotts. Members should be careful not to make agreements that in effect result in the exclusion of a competitor from a market or a competitive activity. For example, an agreement among two or more members of WS-I to no longer license or buy from (or license or sell to) a particular supplier or distributor might constitute such a boycott. To avoid this risk, members should avoid any discussion or conduct that involves the refusal to deal with a particular third party.

WS-I itself, as a group of competitors engaged in the process of establishing and certifying protocols that may impact other industry members, could be perceived as engaging in boycott-type activities if its protocols are adopted without technical justification or otherwise disregard the guidelines set forth herein. For this reason, counsel must

have the opportunity to review any proposed changes to membership rules or this Policy, expulsion of members for cause or without cause, and any proposed rules that might disadvantage those who are not WS-I members.

III. GENERAL OPERATING POLICIES

In order to minimize antitrust risk, it is important that WS-I proceedings and activities be conducted according to its By-Laws and other policies, departures from which should be reviewed by WS-I antitrust counsel. In particular:

A. Membership. Any organization or entity that satisfies WS-I membership criteria may join WS-I. Membership is non-exclusive. Accordingly, members are not precluded from joining any similar organizations.

B. Notice and Agenda. Each WS-I meeting should be preceded by a notice to the members of the committee or group, such notice to include a draft agenda. The agenda should be approved at the beginning of each meeting and followed. If potential antitrust questions are raised by the agenda, they should be reviewed in advance by legal counsel or, alternatively, counsel may be invited to be present at meetings at which antitrust sensitive issues may be discussed.

C. Meetings and Minutes. WS-I should prepare minutes in accordance with any procedures set forth in the By-laws and other policies. Any deficiencies in minutes should be brought to the attention of counsel.

D. Conduct of Meetings. All participants should be afforded an opportunity to present their views. WS-I staff and committee chairs should terminate any discussion, seek counsel's advice or if necessary, terminate any meeting if the discussion might be construed to raise questions under the antitrust laws.

E. Distribution of Antitrust Policy. It is the policy of WS-I that a copy of this antitrust policy be given to each Director, Officer, representative of each member organization, all Members and all WS-I employees.

IV. MEMBER CONDUCT

All members should following these guidelines:

A. Members should not use any WS-I activity as a means for effecting or discussing any understanding or agreement, written or oral, formal or informal, implied or express for the purpose of boycotting or excluding from competition any person, company or other legal entity or agreeing to not compete.

B. Members should not, without prior review and approval by WS-I antitrust counsel, discuss or exchange information regarding:

- Individual company current or projected prices, price changes, price differentials, markups, discounts, allowances, terms and conditions or sale, including credit terms, etc., or data that bear on prices, including profits, margins or cost.
- Industry pricing policies, price levels, price changes, differentials, or the like.
- Changes in industry production, capacity or inventories.
- Individual company bids or intentions to bid for particular products, procedures for responding to bid invitations or specific contractual arrangements.
- Plans of individual companies concerning the design, characteristics, production, distribution or marketing or introduction dates of particular products, technologies, or services, or other marketing plans.
- Matters relating to actual or potential individual suppliers that might have the effect of excluding them from any market or of influencing the business conduct of firms toward such suppliers or customers.

- Individual company current or projected cost of procurement, development or manufacture of any product.
- Individual company market shares for any product or for all products.
- The above matters during social gatherings incidental to WS-I sanctioned meetings, even in jest.

C. All protocols adopted by WS-I will be non-binding suggestions of WS-I and Members are not required to use, announce or market materials or specifications adopted by WS-I. Members are free to design, develop, manufacture, acquire or market specifications, products and services, in whatever way they choose, so long as their conduct otherwise comports with applicable laws and regulations.

D. Member corporations assume responsibility to provide appropriate legal counsel to their representatives regarding compliance with this policy.

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If you have a question regarding these matters, contact your own counsel or Jeffrey D. Neuburger, Esq. counsel to WS-I, at the firm Brown Raysman Millstein Felder & Steiner LLP:

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