

Workgroup: Network Working Group

Published: 21 October 2022

Intended Status: Informational

Expires: 24 April 2023

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Antitrust Guidelines for IETF Participants

Abstract

This document provides guidance for IETF participants on compliance with antitrust laws and how to reduce antitrust risks in connection with IETF activities.

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Table of Contents

- [1. Introduction](#)
- [2. Background](#)
 - [2.1. A Note About Terminology](#)
 - [2.2. Purpose of Antitrust or Competition law](#)
 - [2.3. Overlapping Areas of Concern](#)
- [3. Existing IETF Antitrust Compliance Strategy](#)
- [4. Key Recommendations](#)
 - [4.1. Avoid 'red flag' Topics](#)
 - [4.2. Use Caution With 'yellow flag' Topics](#)
 - [4.3. Obtain Independent Legal Advice](#)
 - [4.4. Escalate Antitrust-Related Concerns](#)
- [5. IANA Considerations](#)
- [6. Security Considerations](#)
- [7. Normative References](#)
- [8. Informative References](#)
- [Authors' Addresses](#)

1. Introduction

Standards development frequently requires collaboration between competitors. Cooperation among competitors can spark concerns about antitrust law or competition law violations. This document provides guidance for IETF participants about how to reduce antitrust risks in connection with IETF activities.

2. Background

2.1. A Note About Terminology

"Antitrust law" and "competition law" are used synonymously in this document. "Antitrust" is the word that's used in the US and in several other jurisdictions; "competition law" is the terminology used in Europe and in many other jurisdictions. There can be some nuanced differences between how different jurisdictions address these kinds of legal issues, and sometimes people use the terminology differently to highlight these nuances, but here they are being used as synonyms.

2.2. Purpose of Antitrust or Competition law

The U.S. Department of Justice says that "the goal of the antitrust laws is to protect economic freedom and opportunity by promoting free and fair competition in the marketplace. Competition in a free market benefits consumers through lower prices, better quality and greater choice. Competition provides businesses the opportunity to compete on price and quality, in an open market and on a level playing field, unhampered by anticompetitive restraints." Fundamentally, antitrust or competition laws are designed to

facilitate open, fair, robust competition, ultimately to benefit consumers.

2.3. Overlapping Areas of Concern

There are two overlapping areas of concern the IETF has in connection with antitrust compliance:

- *Most acutely, the IETF must not have anyone who is officially representing the IETF, in any capacity, engage in problematic antitrust behavior and create liability for the IETF.
- *Additionally, the IETF must not be a forum where participants engage in problematic antitrust behavior, even if direct liability for that behavior falls on those participants and not the IETF, to avoid reputational harm to the IETF.

3. Existing IETF Antitrust Compliance Strategy

Compliance with the BCPs and other relevant policies that document the established rules and norms of the IETF facilitates compliance with antitrust law, as the IETF structure and processes are designed to mitigate antitrust risks. As a reminder, participants are required to comply with the following policies:

- *The Internet Standards Process as described in BCP 9 [[BCP9](#)] , which is designed to "provide a fair, open, and objective basis for developing, evaluating, and adopting Internet Standards," and provides robust procedural rules, including an appeals process.
- *The Working Group Guidelines and Procedures described in BCP 25 [[BCP25](#)] , which emphasize requirements for "open and fair participation and for thorough consideration of technical alternatives," and describe IETF's consensus-based decision-making processes.
- *The IETF framework that participants engage in their individual capacity, not as company representatives, and "use their best engineering judgment to find the best solution for the whole Internet, not just the best solution for any particular network, technology, vendor, or user," as described in BCP 54 [[BCP54](#)] .
- *The IETF's intellectual property rights policies as set forth in BCP 78 [[BCP78](#)] and BCP 79 [[BCP79](#)] ; these policies are carefully designed to "benefit the Internet community and the public at large, while respecting the legitimate rights of others."
- *The established conflict of interest policies, such as the IESG Conflict of Interest Policy, the IAB Conflict of Interest Policy

or the IETF LLC Conflict of Interest Policy, if and when applicable.

4. Key Recommendations

The most important recommendation is for IETF participants to rigorously follow all applicable IETF policies as set out in section 3 above.

Additionally it is recommended that IETF participants:

- *Avoid 'red flag' topics
- *Use caution with 'yellow flag' topics
- *Obtain independent legal advice, as appropriate
- *Escalate antitrust-related concerns

4.1. Avoid 'red flag' Topics

Some topics are particularly inappropriate for discussion in a standards setting environment where representatives from competitors are likely to be present. These topics include: product pricing, profit margins, business relationships between specific vendors and customers, details about particular supply chains, discussions about particular market opportunities, or employee compensation or benefits. While not all discussions of these topics would necessarily be antitrust violations, prudence suggests that avoiding these topics altogether in the context of collaborative IETF discussions best mitigates antitrust risks for the IETF and its participants.

Note that antitrust law reaches beyond these topics, however. For example, any behavior that amounts to an agreement to restrain marketplace competition, or that facilitates monopolization of particular markets, raises potential antitrust risks. Participants must ensure that their conduct does not violate any antitrust laws or regulations.

4.2. Use Caution With 'yellow flag' Topics

Two topics that can be relevant at times in a standard setting context but that can also raise some competition law risks are:

- *Evaluating the relative implementation costs of two technical alternatives to decide whether one is significantly more feasible in the market and thus a better candidate for standardization.

*Seeking clarifications about IPR disclosures, particularly when any such clarifications could be perceived as entering into negotiations of IPR terms.

IETF participants should consult with IETF legal counsel and/or other IETF experts as needed to ensure that an investigation of these topics follows established best practices.

4.3. Obtain Independent Legal Advice

All IETF participants are expected to behave lawfully when engaged in IETF activities, including by following applicable antitrust law. The IETF does not provide legal advice to participants, and instead recommends that participants obtain independent legal advice as needed. IETF participants should consult with their own counsel when antitrust or competition law-related questions arise.

4.4. Escalate Antitrust-Related Concerns

Participants should report potential antitrust concerns in the context of IETF activities through the following channels: IETF Chair (chair@ietf.org), the IETF LLC executive director (exec-director@ietf.org), the IETF legal counsel (legal@ietf.org), or via the IETF LLC whistleblower service.

5. IANA Considerations

No values are assigned in this document, no registries are created, and there is no action assigned to the IANA by this document.

6. Security Considerations

This document may be considered to document means to avoid risks to the IETF and IETF participants related to antitrust. One may consider those to be security considerations. Other than that, this document introduces no known security aspects to the IETF or IETF participants.

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