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## **Antitrust Guidelines for IETF Participants**

### **Abstract**

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

### **Status of This Memo**

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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. Additional Recommendations](#)
  - [4.1. Topics to Avoid](#)
  - [4.2. Topics Requiring Caution](#)
  - [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 is intended to educate IETF participants about how to reduce antitrust risks in connection with IETF activities. Nothing in this document is intended to change existing IETF policies or to prohibit lawful behavior that falls within those policies by IETF participants.

## **2. Background**

### **2.1. A Note About Terminology**

"Antitrust law" and "competition law" are used synonymously in this document. "Antitrust" is the word that is 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 [[DOJ](#)] 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." Similarly, the European Commission [[EC](#)] states that the purpose of

its competition law rules is "to make EU markets work better, by ensuring that all companies compete equally and fairly on their merits" which "benefits consumers, businesses and the European economy as a whole." 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 cannot 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 cannot 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 (see [[BCP9](#)] and [[LLC](#)]), 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. Additional Recommendations**

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

This section provides more information about:

\*Certain topics that are generally inappropriate for discussion in a standards setting environment

\*Certain topics that can be relevant at times in a standard setting context but that can potentially raise competition law risks when engaged in collaboratively

\*The importance of participants obtaining independent legal advice, as appropriate

\*Paths to escalate antitrust-related concerns

##### **4.1. Topics to Avoid**

While IETF participants are expected to participate as individuals, their actions could still be construed as representing their employer, whatever their role. Therefore, participants should be aware that some topics are generally inappropriate for discussion in a standards setting environment where representatives from competitors to their employer are likely to be present. These topics include: discussion about product pricing or profit margins among potential competitors, the details of business relationships between specific vendors and customers, details about the supply chains of specific companies, discussions about market opportunities for specific companies, or employee compensation or benefits among potentially competitive employers. While not all discussions of these topics would necessarily be antitrust violations, and recognizing that analysis of antitrust considerations will be different for differently-positioned participants, prudence suggests that avoiding these specific topics in the context of the collaborative IETF process 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 are responsible for ensuring that their conduct does not violate any antitrust laws or regulations.

#### **4.2. Topics Requiring Caution**

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

\*Using unpublished market data to evaluate 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.

\*Entering into potentially discriminatory, group negotiations of IPR terms.

IETF participants who require informal advice on these issues have a number of options open to them, including speaking to relevant Area Directors, raising the matter with the community on a mailing list, or contacting IETF counsel directly.

#### **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.

#### **4.4. Escalate Antitrust-Related Concerns**

Participants can report potential antitrust issues in the context of IETF activities by contacting IETF legal counsel ([legal@ietf.org](mailto:legal@ietf.org)) or via the IETF LLC whistleblower service. Note that reports will only be assessed for their impact upon the IETF; participants directly impacted by an antitrust issue are responsible for obtaining their own legal advice.

### **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 introduces no known security aspects to the IETF or IETF participants.

## 7. Normative References

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**[DOJ]** "The mission of the Antitrust Division", <<https://www.justice.gov/atr/mission>>.

**[EC]** "Competition", <[https://commission.europa.eu/about-european-commission/departments-and-executive-agencies/competition\\_en](https://commission.europa.eu/about-european-commission/departments-and-executive-agencies/competition_en)>.

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