

## **OPEN SECURITY AND SAFETY ALLIANCE ANTITRUST POLICY**

The Open Security & Safety Alliance, Inc. (the “Alliance”) recognizes the importance of antitrust and competition laws. All of the Alliance’s activities must be conducted strictly in accordance with U.S. federal and state antitrust and competition laws and regulations, Article 101 of the Treaty on the Functioning of the European Union and Guidelines promulgated by the European Commission thereunder and such laws, regulations and guidelines of any other jurisdiction where the Alliance conducts meetings, programs, or activities (collectively, the “Antitrust Laws”). Accordingly, the Alliance hereby issues the following antitrust policy (the “Policy”) for itself and its Participants, as guidance in connection with participation in the Alliance’s activities. This Policy is 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 any provision of this Policy and the Antitrust Laws, the Antitrust Laws shall control.

Capitalized term not defined herein will have the meaning set forth in Article III of the Bylaws of the Alliance (“Bylaws”).

### **I. OVERVIEW OF THE ANTITRUST LAWS AND PROHIBITED ACTIVITIES**

The principal federal antitrust statutes of the United States are the Sherman Antitrust Act, the Clayton Act, and the Federal Trade Commission Act. In addition to the federal statutes, many states have statutes which replicate the prohibitions of the federal statutes and in some circumstances exceed them. The principal competition provision of the Treaty on the Functioning of the European Union is Article 101, under which the European Commission has promulgated guidelines pertinent to horizontal cooperation agreements (OJ 2011 C11/1, as corrected by OJ 2011 C33/20). The Antitrust Laws make monopolization, unreasonable restraints of trade and arrangements that unreasonably restrict competition, illegal. Generally, the Antitrust Laws prohibit any agreement that:

- Fix prices;
- Divide markets or customers;
- Exclude, boycotts or jointly refuses to deal with certain competitors, suppliers, distributors, or customers; and/or
- Arrive at any understanding, express or implied, respecting any anticompetitive concerted action.

More specifically, in regards to the activities of a standards setting organization (SSO), such as the Alliance, the Antitrust Laws focus on whether or not any such activity is reasonably necessary to achieve legitimate procompetitive ends, whether the benefits of the standard outweigh the costs, and whether the organization promulgating the standard has adopted procedures and policies that minimize risks of anticompetitive effects. The benefits of standard setting are considerable, and most standard setting development activities, when conducted within the guidelines established under the Antitrust Laws,

have little, if any antitrust risk. However, antitrust or competition problems may arise in several situations, such as in the following illustrative examples:

- When members misuse the SSO to facilitate agreements that restrain trade such as when product standardization has the effect of stabilizing prices.
- When a member fails to disclose intellectual property rights (“IPR”) in the standards adopted and then seeks to assert its rights against those who adopt the standard.
- When an SSO adopts a specification that non-members are not able to meet, and that gives the members of the standards development group a competitive advantage in manufacturing or marketing.
- When the SSO’s rules and procedures are used to unreasonably exclude some competitors.
- When IPR that is essential to the implementation of the standard is not made available on a fair, reasonable and non-discriminatory (“FRAND”) basis.

A violation of the Antitrust Laws can have serious consequences for the Alliance and for its Participants.

## **II. CONDUCT BY THE ALLIANCE AND ITS PARTICIPANTS**

The activities of the Alliance are not intended to restrain competition. The purpose of the Alliance as it is stated in the Bylaws is intended to foster competition and to benefit consumers. To that end, the Alliance and its Participants shall adhere to the following:

1. This Policy shall be promulgated to all Participants. All Participants shall abide by this Policy.
2. Each Participant acknowledges that it is imperative that it and its representatives act in a manner that does not violate the Antitrust Laws.
3. The Alliance and its Committees, Work Groups, and activities shall not 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 or among competitors, or any exchange of information, with regard to their sales or purchase prices, discounts, credit terms, profits, costs, production plans and volumes, sales territories or markets, allocation of territories or customers, terms or conditions of sale or purchase, or strategic, business, marketing or product development plans or any limitation on the timing, cost or volume of their research, production, strategic, business, marketing or product development plans, or sales.
4. Each Participant 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.
5. The Alliance and its Participants, in connection with their participation in the Alliance, shall not enter into any agreement or understanding between or 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.

6. The Alliance and its Participants, in connection with their participation in the Alliance, 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 a Member from disclosing and asserting its IPR, subject to any license obligation that may attach to its IPR.
7. Each Participant hereby assumes responsibility to provide appropriate legal counsel to its representatives acting on such Participant's behalf regarding the importance of limiting the scope of their discussions to the topics that relate to the purposes of the Alliance, whether or not such discussions take place during formal meetings, informal gatherings, or otherwise.
8. Each Participant should promptly report any violation of this Policy to the Alliance's Executive Director and/or Legal Counsel.

### III. GUIDELINES

The policies of the Alliance conform to the following guidelines:

#### **Standard Setting Development Activities**

1. **Membership.** Alliance membership should be available to all interested and related organizations on reasonable terms. No applicant for membership, who otherwise meets the qualifications set forth in the Bylaws of the Alliance, should be rejected for any anti-competitive purpose or solely for the purpose of denying such applicant the benefits of membership.
2. **Participation in Committee or Work Group.** No Participant shall be excluded from a Committee or Work Group for any anticompetitive reason. The Alliance may, however, condition participation in accordance with any objective criteria established by the Board of Directors and applied in an even-handed and neutral manner, included but not limited to permitting varying levels of participation in accordance with class wide criteria and restricting the total number of participants from a particular class of membership.
3. **Voluntary Standards.** To the extent that the Alliance recommends, develops, promulgates, approves, or adopts proposed specifications or standards, adherence to such proposed specifications or standards shall be voluntary on the part of Participants, and shall in no way be compelled or coerced by the Alliance or a Committee, Work Group, or Participant. Participants should not discuss, exchange information, or enter into agreements that prohibit or restrict any

member from establishing or deploying any other specifications or standards. No efforts will be undertaken that are intended to prevent the manufacture, sale, or supply of any product or service not conforming to an adopted specification or standard.

4. **No Sanctions.** The Alliance and its Committees and Work Groups shall not impose sanctions for the violation of, nor shall they enforce compliance with, standards developed, promulgated, approved, or adopted by the Alliance, except that the Alliance may condition use of its trademarks or certification marks on compliance with standards developed to regulate the use of and to protect such marks. Such conditions may be predicated on qualifying products and services pursuant to testing or certification procedures that the Alliance may establish, implement, or reference. The Alliance reserves the right to take appropriate action against any person or entity that engages in false or misleading advertising regarding use of or compliance with standards of the Alliance.
5. **Acceptable Criteria for Standards.** Any standards that may be recommended, developed, promulgated, approved, or adopted by the Alliance in order to effectuate its purposes shall be based upon relevant considerations (e.g. quality and technological attributes), and shall not be based upon any effort, intention, or purpose to unreasonably reduce or eliminate competition in the sale, supply, and furnishing of products and services.
6. **Open Participation.** The Alliance will endeavor to ensure that all competitors (and/or stakeholders) in the market affected by the standard may take part in choosing and elaborating the standard through participation in the Alliance. If in the absence of a limitation on the number of participants it would not be possible to develop or adopt the standard, other stakeholders are kept informed and consulted on the work in progress.

### **Conduct of Meetings**

Special care should be taken to ensure that meetings comply with the Antitrust Laws. The following practices should be followed:

1. **Prohibited Topics.** Discussions in all meetings, including Board of Director, Committee and Work Group meetings, should relate solely to the legitimate purposes of the Alliance. Care should be taken to avoid even the appearance of discussing competitively sensitive information, as such discussions may lead to the inference of an illegal agreement on prohibited topics. To this end, there should be no discussion, communication or other exchange between or amongst Participants and/or their representatives regarding any of the following:
  - Prices or pricing strategy. This requirement is to be interpreted broadly, to include, for example, current or projected prices or purchase prices; price levels; pricing procedures or formulas; price changes or differentials; markups; discounts; allowances; terms and conditions of sale or purchase, including credit terms, warranty provisions, etc.; or other information that might comprise an element of a product's price, including profits, margins or cost data.

- Production levels, production capacity, or product inventories.
  - Plans pertaining to the development, production, distribution, marketing, or introduction dates of particular products, including proposed marketing territories and potential customers;
  - Terms on which any Member will or will not deal with particular competitors, suppliers, distributors, or customers;
  - Current or projected cost of procurement, development, or the manufacture of any product
  - Allocation of customers, markets or territories.
  - Non-public information regarding market shares.
2. **Meeting Agenda.** All meetings should follow a written agenda. If potential antitrust or competition questions are raised by an agenda item, such item will be reviewed in advance by counsel.
  3. **Minutes.** Minutes should be prepared promptly after the meeting, summarizing all matters discussed. Only minutes approved by the Board and/or counsel should be distributed (even in preliminary form) and only minutes as approved need be retained. The purpose of this is to avoid the preservation of misstatements and ambiguities that may create misperceptions of the meeting. All Board minutes will be made available to Members on a timely basis.
  4. **No Informal Meetings.** Informal meetings should not be held and all discussions among Participants outside of meetings should comply with the standards of this Policy.

#### IV. Conclusion

The essential principle which should guide the activities and programs of the Alliance and its Participants in order to avoid antitrust violations is that no illegal agreements, arrangements, understandings or exchanges of information should be reached or carried out through the Alliance. Conduct which might even give the appearance of an illegal agreement should also be avoided. Each Member of the Alliance and its representatives should be alert to conduct that might fall into areas of particular antitrust or competition concern. Participants should be aware that this Policy cannot address every potential area of antitrust concern for the Alliance and its Participants. Whenever there is doubt, it is the policy of the Alliance to seek the assistance of legal counsel.