

Antitrust Policy

Introduction

The mission of the Open Source Firmware Foundation (OSFF) is to undertake research and to educate open source communities by facilitating technology exchange with the aim of building a global community around open-source firmware through sharing of intellectual resources, infrastructure, services, events, and training.

The purpose of this Antitrust Policy (the “Policy”) is to avoid antitrust risks in carrying out this mission.

It is OSFF’s policy to comply with all applicable state and federal antitrust and trade regulation laws, and applicable antitrust/competition laws of other countries (collectively, the “Antitrust Laws”). The penalties for violating the Antitrust Laws can be severe, including treble damages in the U.S., and large fines and imprisonment of individuals found guilty of illegal conduct. The U.S. Supreme Court has ruled that a trade association may be held legally responsible for the unauthorized, as well as authorized, acts of its members.

OSFF will use its best reasonable efforts to comply in all respects with the Antitrust Laws. In addition, all members of OSFF (collectively, “members”) must likewise use their best reasonable efforts to comply in all respects with the Antitrust Laws and this Policy in carrying out OSFF-related activities, as must all non-members who participate in such activities, whether directly or indirectly, including without limitation, participants in OSFF’s working groups and OSFF’s employees, consultants, directors and officers (all such non-member participants, “participants”).

The goal of Antitrust Laws is to encourage vigorous competition. Nothing in this Policy, or in any OSFF document or policy, prohibits or limits the ability of OSFF members or participants to make, sell or use any product, or otherwise to compete in the marketplace. This Policy provides general guidance on compliance with Antitrust Law. Members and participants should contact their respective legal counsel to address specific questions.

This Policy is conservative and 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 any inconsistency between this Policy and the Antitrust Laws, the Antitrust Laws preempt and control.

This Policy shall be promulgated to all members and participants in OSFF.

The following policies address three areas in which the Antitrust Laws are particularly concerned: Membership; Conduct of Meetings; and Requirements/Standard Setting.

Membership

OSFF membership shall be made available on reasonable terms to all entities meeting the qualifications established by OSFF for membership, as set forth in OSFF's bylaws. No applicant for membership who meets the membership criteria should be rejected for any anti-competitive purpose or solely for the purpose of denying the applicant the benefits of membership.

Any OSFF information, materials, or reports available to members shall be made available to non-members on reasonable terms when failure to make them available will impose a significant economic or competitive disadvantage or cost to non-members.

Conduct of Meetings

At meetings among actual or potential competitors, there is a risk that participants in those meetings may improperly disclose or discuss information in violation of the Antitrust Laws, or otherwise, act in an anti-competitive manner. To avoid this risk, OSFF members and participants must adhere to the following policies when participating in OSFF-related or sponsored meetings, conference calls, or other forums.

OSFF members and participants **must not**, in fact, or appearance, discuss or exchange information regarding:

- An individual company's current or projected prices, price changes, price differentials, markups, discounts, allowances, terms and conditions of sale, including credit terms, etc., or data that bear on prices, including profits, margins, or cost.
- Industry-wide pricing policies, price levels, price changes, differentials, or the like.
- Actual or projected changes in industry production, capacity, or inventories.
- Matters relating to 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, marketing, or introduction dates of particular products, including proposed territories or customers.
- 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.
- Matters relating to actual or potential customers that might have the effect of influencing the business conduct of firms toward such 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.
- Confidential or otherwise sensitive business plans or strategies.

In connection with all OSFF-related meetings, conference calls, or other forums for exchange of information, members and participants must do the following:

- Adhere to prepared agendas.
- Insist that meeting minutes be prepared and distributed to all participants, and that meeting minutes accurately reflect the matters that transpired.
- Understand the purposes and authority of each OSFF committee, working group, or other groups in which they participate.
- Consult with their respective counsel on all antitrust questions related to OSFF meetings.
- Protest against any discussions that appear to violate these policies or the Antitrust Laws, leave any meeting in which such discussions continue, and either insist that such protest be noted in the minutes if occurring during a meeting or make such protest known to the Legal Counsel of OSFF (see Contact Information, below).

Requirements/Standard Setting

OSFF and its working groups may establish standards, technical requirements, and/or specifications for Open-Source Firmware-based products (collectively, “requirements”). All such requirements shall be voluntary. Members and participants shall not enter into agreements that prohibit or restrict any member or non-member from establishing or adopting any other requirements. Members and participants shall not undertake any efforts, directly or indirectly, to prevent any firm from manufacturing, selling, or supplying any product not conforming to a requirement.

Parties who may be affected by a requirement adopted by an OSFF working group shall be given the opportunity to comment on the development of any such requirement, regardless of whether they are members of OSFF. OSFF and its working groups will publish all proposed requirements on the OSFF website for a reasonable period of time prior to formal adoption, and shall consider comments to those proposed requirements prior to adopting a final requirement.

OSFF working groups shall develop and select requirements based on their quality, technological attributes, and ability to address the needs of Open-Source Firmware users. OSFF working groups shall not promote standardization of commercial terms, such as terms for license and sale.

All participants in OSFF working groups shall execute and abide by all applicable rules, policies, and procedures adopted by OSFF or the applicable working group, as updated from time to time (collectively “OSFF Policies”). Requirements developed by OSFF working groups shall not incorporate any information that is proprietary, confidential, or otherwise would require a manufacturer, developer, or end-user of a product conforming to the requirements to obtain a

license or permission from any third party to use the requirements. When participating in the development of requirements, members and participants in the process shall not contribute information that is proprietary, confidential, or otherwise protected by rights belonging to that member, participant, or any third party except as may be permitted in accordance with OSFF Policies.

Legal Review

OSFF's policy is to discuss thoroughly with legal counsel any proposed programs or policy decisions before they are implemented. If any member or participant has any question as to the legality of a proposed course of action, the matter should be immediately referred to the General Counsel of OSFF. In this manner, OSFF can ensure continued pursuit of its legitimate objectives with maximum protection for members and participants.

Contact Information

To contact OSFF regarding matters addressed by this Antitrust Policy, please send an email to legal@opensourcefirmware.foundation, and reference "Antitrust Policy" in the subject line.