

ECLIPSE FOUNDATION

ANTITRUST COMPLIANCE POLICY

Effective as of August 15, 2020

The Eclipse ~~technology is a~~Foundation provides vendor-neutral, open development ~~platform~~ supplying of open source technologies, specifications, platforms, runtimes, frameworks, and exemplary, extensible tools (the "Eclipse Platform"). ~~Eclipse Platform tools are exemplary in that they verify the utility of the Eclipse frameworks, illustrate the appropriate use of those frameworks, and support the development and maintenance of the Eclipse Platform itself; Eclipse Platform tools are extensible in that their functionality is accessible via documented programmatic interfaces.~~Technology"). The purpose of the Eclipse Foundation is to advance the creation, evolution, promotion, and support of the Eclipse PlatformTechnology, and to cultivate both an open source community and an ecosystem of complementary products, capabilities, and services.

It is the express policy of the Eclipse Foundation to require that all ~~of the members of the Eclipse Foundation (the "Members"), all of the~~ activities of the Eclipse Foundation, and any ~~projects, committees, or working groups~~ organized under its auspices, be conducted strictly in accordance with ~~U.S. federal and state~~applicable antitrust laws ~~and foreign (the "antitrust laws--")~~.

This policy has been prepared to inform ~~members~~Members of the Eclipse Foundation of this obligation.

Antitrust law violations can be punished by heavy fines against both companies and individuals and, in certain jurisdictions, also by imprisonment. In addition, antitrust violations entail the further risk of being followed by civil claims for damages by affected third parties as well as reputational damage for the Members, the Eclipse Foundation and the Eclipse Technology.

I. OVERVIEW OF ANTICOMPETITIVE CONDUCT

Antitrust laws generally prohibit agreements between, undertakings, decisions by associations of undertakings and concerted practices that have as their object or effect the prevention, restriction or distortion of competition and in particular the following:

II.(a) Price-Fixing

Agreements ~~among competitors~~ to fix prices are ~~per se~~generally unlawful and ~~the government~~governmental competition authorities strictly enforces lawsenforce rules against price-fixing. ~~Competitors may~~ in particular, be found to have engaged in price-fixing if they:

- ~~agree on the range of prices within which purchases or sales may be made~~ or that prices are to fall within any sort of formula;
- ~~agree to fix or stop giving discounts; or~~

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• • agree to artificially increase or limit supply

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Formal written agreements are not required for an antitrust violation to exist. -Informal, even tacit, agreements may violate the antitrust laws.

Illegal price fixing may occur even when undertaken by non-competitors when there is 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 as to resale prices, whether formal or informal, express or implied, is to be avoided.~~

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Members should keep in mind at all times that the mission of the Eclipse Foundation is to promote the development of the Eclipse ~~Platform Technology~~. Accordingly, Eclipse Foundation activities should not involve any individual ~~member's~~Member's activities in pricing or marketing particular products. ~~To avoid the risk of liability, Eclipse Foundation members~~Members should never discuss prices, pricing systems, or discounts relating to the Eclipse Foundation or in conjunction with Eclipse Foundation activities, nor should the Eclipse Foundation ever be involved in ~~members'~~Members' pricing or marketing practices.

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III.(b) Agreements ~~To~~ Allocate Markets

The antitrust laws expressly prohibit any understanding or agreement between competitors or ~~members~~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~~Member agrees to stay out of another's territory or product markets may constitute a violation of the antitrust laws and must be avoided.

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IV.(c) Concerted Refusals to Deal

Members should avoid participating in "concerted refusals to deal" relating to the Eclipse Foundation or in conjunction with Eclipse Foundation activities, ~~these are~~ 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~~Members of an organization or group 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~~Members should avoid any discussion or conduct that involves the refusal to deal with a particular third party.

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(d) Exchange of competitively sensitive information

Even the exchange of competitively sensitive information can under certain circumstances constitute a breach of antitrust laws. The extent to which information exchanges are lawful or unlawful is case-specific. But generally, any exchange of non-public, competitively sensitive information should be reviewed and approved by legal counsel in advance of the exchange.

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II. PROMOTION OF COMPETITION

Nothing contained in this policy should be construed to prohibit or limit a ~~member~~Member from making, using, selling, marketing, or promoting products that do not embody or make use of the Eclipse ~~Platform~~Technology. Members are not required to exclusively use, announce, or promote Eclipse tools or specifications. Members are free to design, develop, manufacture, acquire or market their respective products in any lawful way.

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III. GENERAL OPERATING PROCEDURES

In order to ensure that Eclipse Foundation activities are conducted fairly in a manner that does not unduly benefit some competitors to the detriment of others, it is important that proceedings of the organization be conducted openly and with the opportunity for participation from all interested parties. To that end, the policies of the Eclipse Foundation conform to the following guidelines:

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A. Membership. Any organization or entity that satisfies membership criteria and agrees to abide by the rules and agreements of the Eclipse Foundation may join the Eclipse Foundation. Members are not precluded from joining any similar organizations.

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B. Notice of Meetings. All meetings shall be preceded by notice to ~~members~~Members, as set forth in the by-laws.

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C. Meetings and Agenda: All meetings will follow a prepared agenda and follow any procedures set forth in the by-laws. An agenda should be distributed prior to the meeting. Potential antitrust questions posed by the agenda should be raised in advance.

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D. Minutes. Accurate minutes shall be kept of all Board and committee meetings. The minutes of the preceding meetings shall be read and approved at the beginning of each meeting. After the minutes have been approved, they shall be distributed to all attendees within a short period following the meeting. It is important that any deficiencies in minutes promptly be brought to the attention of the Eclipse Foundation secretary.

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E. Informal gatherings: Antitrust law violations may also occur during informal gatherings if Members engage in any of the anticompetitive practices described under Sections I and IV. The present antitrust compliance policy applies to any of the Foundation's activities, whether "official" or "informal" gatherings.

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E-F. Distribution of Antitrust Policy. It is the policy of the Eclipse Foundation that a copy of this antitrust policy be distributed ~~to~~and its contents acknowledged by all ~~members~~Members.

IV. PROHIBITED MEMBER CONDUCT

~~DO~~The Eclipse Foundation is committed to taking all reasonable measures to ensure compliance with competition law at all Eclipse Foundation events, meetings and activities.

Members SHALL NOT discuss or exchange information relating to the Eclipse Foundation or in conjunction with Eclipse Foundation activities regarding:

- Any ~~member's of the Member's~~ 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 for any product or service.
- Individual company plans to license intellectual property to or from third parties.
- Individual company's conditions included in contracts with third parties.
- Agreements on or allocation of customers, production volumes, geographic or product markets.
- Individual company costs of procurement, development or manufacture of any product.
- Individual company information on research and development projects except for technical information made, or intended to be made, freely available worldwide under an open source license..
- "Individual company information on research and development projects except for technical information made, intended to made, freely available worldwide under an open source license"
- Individual company market shares for any product or service or for all products and services.
- Express or tacit agreements on individual or concerted refusals to deal against determined companies.

V. PERMITTED MEMBER CONDUCT

In addition to other legally permissible activities, ~~members~~Members may engage in the following conduct:

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- Members may individually design, develop, manufacture, acquire or market their own competitive specifications, products and services.
- Members may join or participate in any other associations, including competitive open-source organizations.
- Members may individually decide whether or not to utilize Eclipse developments in their business operations and to what extent.
- Members should adhere to prepared agendas for all Eclipse Foundation meetings.
- During Eclipse Foundation meetings, Members shall make sure that discussions follow the prepared agenda.
- If any suspicions arise of antitrust relevant matters being brought up during meetings, Members should protest and, if the criticised behavior persists, leave the Eclipse Foundation meeting. The dissent of the Member(s) shall be reflected in the minutes of the meeting.
- Members should insist that meeting minutes be prepared and distributed to all participants, and object whenever meeting minutes do not accurately reflect the matters that transpired.
- Members should report any violations of this Policy concerning Eclipse Foundation activities to the Board of Directors.

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Members assume responsibility to provide appropriate legal counsel to their representatives regarding compliance with this policy. Members should ensure that their representatives are informed and trained in antitrust compliant behavior towards competitors.

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VI. POLICY VIOLATION, SANCTIONS

If a Member or their representative violates this policy, the Board of the Eclipse Foundation is entitled, as provided by the by-laws, to decide upon the Termination of Membership.

VII. REVISIONS, NOTICES

The Board of the Eclipse Foundation is empowered to approve changes to this Antitrust Policy. After any such Board approval, a minimum of thirty (30) days' notice shall be provided to all Members and Committers of the new version of this Antitrust Policy before it becomes effective.

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If you have a question regarding these matters, contact your own counsel or ~~Jeffrey Neuburger, of the firm Proskauer Rose LLP, which provides counsel to the Eclipse Foundation:~~

~~Jeffrey D. Neuburger
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~~[at legal@eclipse.org.](mailto:legal@eclipse.org)~~

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