

# **Open Industry 4.0 Alliance Antitrust/ Competition Compliance Policy**

As of December 18<sup>th</sup> 2020



## Open Industry 4.0 Alliance Antitrust/Competition Compliance Policy

The Open Industry 4.0 Alliance is committed to compliance with all laws, regulations and ethical standards, including antitrust and competition laws. The purpose of this Antitrust/Competition Compliance Policy is to set forth general principles most applicable to Open Industry 4.0 Alliance activities to enable Open Industry 4.0 Alliance employees, members and others acting on its behalf to recognize and avoid potential antitrust/competition law violations and to seek assistance when appropriate. All Open Industry 4.0 Alliance employees, members and other persons acting on behalf of the Open Industry 4.0 Alliance are expected to comply with this Antitrust/Competition Compliance Policy. Failure to comply with this Antitrust/Competition Compliance Policy may lead to discipline, including termination of employment or membership in the Open Industry 4.0 Alliance. If you have any questions concerning this Antitrust/Competition Compliance Policy, contact [legal@openindustry4.com](mailto:legal@openindustry4.com).

Antitrust/competition laws around the world are designed to promote competition and to provide consumers with the best combination of price and quality. These laws require that competing firms make unilateral and independent decisions on all competition matters, including price and the products and services offered to consumers. Antitrust/competition laws prohibit collusion among competitors and market practices that impair the ability of others to compete. Antitrust/competition laws promote open markets and competition in innovation and development. The Open Industry 4.0 Alliance must not become involved in the competitive business decisions of its members and Open Industry 4.0 Alliance members must not reach agreements that restricts competition between them. The Open Industry 4.0 Alliance must therefore prevent that its activities may lead to foreclosure of innovative technologies and/or exclusion of or discrimination against companies by preventing effective access to participation in Open Industry 4.0 Alliance activities.

Open Industry 4.0 Alliance work aims at the development of pro-competitive 4.0 interoperability solutions that foster economic interpenetration and encourage the creation of new and improved products for the Industrial Internet of Things. Open Industry 4.0 Alliance is aware that competition issues could arise in the development of Open Industry 4.0 standards and solutions when Open Industry 4.0 rules and procedures are used to unreasonably exclude some competitors or tip the process in favor of one group of stakeholders. To prevent such competition law risks, Open Industry 4.0 employees, members and other persons acting on its behalf are bound by the following best practices:

- Make independent decisions regarding any standard, guideline or proposed action. There is no formal or informal requirement to follow an Open Industry 4.0 Alliance standard, guideline or other initiative.
- Understand the Open Industry 4.0 Alliance's IPR policy and the obligation for member organizations to license necessary IP as part of the Open Industry 4.0 Alliance work, such as, but not limited to trademarks, copyright, IP and publications.
- Act in good faith regarding any Open Industry 4.0 Alliance work to ensure an informed choice about implications and effective access to standards, guidelines or other results of Open Industry 4.0 Alliance activities.
- Base and select standards solely on their technological attributes and ability to address desired interoperability and compatibility standards.
- Allow unrestricted member participation in Open Industry 4.0 Alliance work, including standard-setting activities and initiatives.
- Ensure members' access to standards or other results of Open Industry 4.0 Alliance work on fair, reasonable and non-discriminatory terms.
- Don't restrict members to pursue activities outside of Open Industry 4.0 Alliance, including the participation in standard setting or non-standard setting organizations and/or the development of alternative solutions.

Competition issues can also arise if Open Industry 4.0 Alliance meetings and activities are used as an opportunity for competitors to: (i) enter into agreements that could harm consumers or (ii) share competitively sensitive information.

- Open Industry 4.0 Alliance meetings and activities must not be used as an opportunity to discuss or reach anticompetitive agreements, including:
- Price Fixing: Competitors must not agree with each other on the price they will charge customers. Price fixing includes agreements on maximum and minimum prices; a range of prices within they will compete; the amount of discounts or rebates; any term or condition of sale, including credit terms; or any methodology or formula to calculate price.
- Salary and Hiring Practices: Competitors must not agree on employee salaries or other terms of compensation or agree to refuse to solicit or hire another company's employees.
- Market Allocations: Competitors must not agree to divide markets among themselves by geography or customer.
- Boycotts and Refusals to Deal: Competitors must not agree to refuse to do business with a third party, including customers, vendors, and suppliers.
- Bid Rigging: Competitors must not agree to manipulate the bidding process for their services by determining which bids will be submitted, rotating bids, determining who will bid high and who will bid low, or exchanging terms of bids or other sensitive information in advance of submitting or not submitting bids.

Open Industry 4.0 Alliance meetings and activities must not be used for

- Illegal Exchange or Disclosure of Competitively Sensitive Information: Competitors must not reduce competitive pressure by disclosing competitively sensitive information that affects potential uncertainties about business parameters with relevance to their market behavior. The exchange of competitively sensitive information as such is regarded an illegal alignment of otherwise independent

conduct, even absent an express agreement or statement on whether and how such information will be used by the recipient.

Competitively sensitive information includes all non-public business secrets with relevance for actual or current market behavior of a company. Prices or price-related information about past, current and future prices and components of price, input and other costs, profits, margins are typical examples for such type of information. However, competitively sensitive information also comprises other non-public company information such as details on customers or suppliers and the terms negotiated with such companies, quantities, turnover, capacities, marketing plans, investments or company strategies. In the context of innovation, competitively sensitive information does in particular apply to technical business secrets, research activities and R&D strategies, including development costs and capacities, the intentional use for innovative technologies, development alliances, budgets, timelines as well as regulatory and licensing strategies and terms.

In light of the wide notion of an illegal exchange of competitively sensitive information Open Industry 4.0 Alliance employees, members and third persons acting on its behalf will implement appropriate safeguards to exclude the exchange of Competitively Sensitive Information in connection with Open Industry 4.0 Alliance activities.

## **Do's**

- Always make independent decisions regarding the implementation of any standard, guideline or initiative.
- Select and base standards, guidelines, or other initiatives purely on their technological attributes and ability to address desired interoperability and compatibility.
- Limit discussions and activities solely to legitimate Open Industry 4.0 Alliance activities and ensure that during Open Industry 4.0 Alliance work, discussions and activities no Competitively Sensitive Information is disclosed or exchanged. Obtain prior approval from [legal@openindustry4.com](mailto:legal@openindustry4.com) for any deviation from this principle.

- Intervene actively in case any antitrust/competition law concerns may arise from the nature of or in connection with a formal or informal discussion or other Open Industry 4.0 Alliance activity. Stop such discussion/activity immediately and seek clarification from [legal@openindustry4.com](mailto:legal@openindustry4.com) prior to resuming to such activity/discussion.
- Understand the Open Industry 4.0 Alliance's IP policy and its obligations for your organization to license necessary IP, such as, but not limited to trademarks, copyright, IP and publications.

## Don'ts

- Deviate from the best practices established for Open Industry 4.0 Alliance activities as set-out in this Policy.
- Impose any restriction that limits or impairs the freedom of members to make independent decisions whether to adopt or comply with any guideline, standard or proposed action.
- Jointly agree to take any action or informally align behavior with other Open Industry 4.0 Alliance members based on consented behavior.
- Prevent members from joining other standard setting organizations or from developing alternative guidelines or standards.
- Prevent non-members from joining the organization and obtaining access to the Open Industry 4.0 Alliance, including its guidelines or standards.
- Discuss or enter into any agreement to:
  - Fix the price of any product or service or restrict the production of any product or service
  - Fix employee salaries or other terms of employment or not hire or solicit each other's employees
  - Divide or allocate customers or territories

- Boycott or refuse to deal with any other company
  - Rig bids
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- Exchange Competitively Sensitive Business information in connection with or during Open Industry 4.0 Alliance meetings and activities.