

O-RAN Competition Compliance Guidelines

v03 – 25th June 2018

1. BACKGROUND

The purpose of this document is to provide guidelines and general advice to Members and Participants of O-RAN in relation to issues of competition law which may arise in connection with O-RAN meetings or discussions.

It is important to note that this document does not purport to provide more than a brief outline of the relevant law. Clearly, this may not be sufficiently detailed for any particular issue or circumstance, and therefore specific advice should always be obtained should any concern arise related to competition law.

It is the policy of O-RAN that if any doubt exists as to whether it is permissible to discuss a certain issue, then that issue should not be discussed, and the matter should be referred to the O-RAN Board for guidance.

2. INTRODUCTION TO COMPETITION LAW

Competition law has specific rules against agreeing on market behaviour rather than competing. Competition law seeks to promote competition between competitors with the goal of achieving benefits for consumers of products and services. In order to manage risk related to competition law, well-counseled entities carefully manage what they discuss with competitors.

It is no exaggeration to state that the range of subjects, issues and matters, which may be subject to the provisions of both national and international competition law, is broad. There is no definitive list of matters or behaviour, which may be considered “anti-competitive”. Therefore, it is vital that Members and Participants of O-RAN are vigilant in ensuring that at no time are they involved in any behaviour, which may be considered – or misinterpreted as – anti-competitive by the relevant authorities.

3. RULES IN RELATION TO COMPETITION LAW

As O-RAN brings together competing providers of technology and services in the area of telecommunication as well as competing hardware and software manufacturers, these rules apply to all meetings and discussions (both formal and informal) of O-RAN Members and Participants. A failure to respect these rules could expose O-RAN and each of its Members and Participants to serious fines and/or criminal sanctions.

Set out below is a summary of the applicable rules.

Each chairperson of a formal meeting shall be deemed to be responsible for informing participants of these guidelines and of their duty to abide by them. It is incumbent upon all Members and Participants to follow the guidelines, even in informal discussions.

(a) Rules with respect to prices, costs and marketing and sales activities and business plans:

Agreements on prices or other aspects of competition are amongst the most sensitive areas of competition law. Competition authorities are always concerned that when competitors meet they might either openly or tacitly agree to keep prices high so that their profit margins are also higher, or that they will otherwise coordinate their conduct to reduce competition. Due to this concern, all parties must adhere strictly to the following rules in any interactions at O-RAN meetings or calls

- (1) Do not discuss current, future or past prices;
- (2) Do not discuss what is a fair profit level;
- (3) Do not discuss an increase or decrease in price;
- (4) Do not discuss standardising or stabilising prices;
- (5) Do not discuss pricing procedures;
- (6) Do not discuss cash discounts;
- (7) Do not discuss credit terms or any other terms or conditions of sale;
- (8) Do not discuss controlling sales activities;
- (9) Do not discuss allocating markets, customers, suppliers or territories;
- (10) Do not complain to a competitor about its prices;
- (11) Do not discuss refusing to deal with a company because of its pricing or distribution practices;
- (12) Do not undertake any statistical, bench marking or survey program without legal advice;
- (13) Do not promulgate or enforce regulations or policies which have price-fixing implications, such as preventing the advertising of prices; and
- (14) Do not agree to exchange information on market percentages, suppliers or retailers or market supply or demand trends without legal advice.

If there are any questions about the applicability of any of these rules consult with legal counsel before proceeding.

(b) Rules with regard to discussing Technical Standards:

O-RAN has been established to develop architectures and specifications and to take other actions to encourage rapid and broad industry promotion and adoption of open standards and interfaces, embedded intelligence, software-based functions/microservices (including open source) and white box hard-ware for radio access networks. In achieving these goals, O-RAN Members and Participants must ensure that:

- (1) any requirements adopted are based on objective criteria that are interpreted objectively and accurately;
- (2) Subject to consideration by the O-RAN Board, interested parties, including parties who are not current Members or Participants in O-RAN, are given notice and an opportunity to be heard and participate;
- (3) wherever possible, decisions are taken by unanimous agreement of all Members and Participants involved in a particular matter. Where unanimity is not possible, decisions are made based on applicable O-RAN governance systems, and are based on objective and transparent criteria in accordance with O-RAN's stated objectives and goals;
- (4) decisions are not made by those unfamiliar with the requirements to be set;
- (5) the requirements accomplish O-RAN's goals and objectives in a reasonable way, and do not unreasonably restrict competition; and
- (6) compliance with any requirements set by O-RAN is voluntary.

(c) Rules for potentially anti-competitive situations:

If you are part of a conversation or meeting where an inappropriate topic is discussed, you should:

- (1) Inform the other party(ies) that you will not discuss the subject and end the conversation immediately. If the other speaker persists, walk away or end the call;
- (2) Be alert to what others say at O-RAN meetings or gatherings; leave a meeting if anyone persists in discussing a prohibited subject and encourage others to leave if possible. Make your departure obvious -- do not just slip out the backdoor or quietly hang up;
- (3) Be careful in your choice of words; never, even in jest, use words that indicate that you approve of or have participated in prohibited conduct; avoid conjecture, exaggeration or colourful language that might be misinterpreted;

(d) Rules in relation to membership

We remind Members and Participants that, as they are aware, O-RAN has certain fixed procedures and objective and non-discriminatory criteria for accepting new members. These procedures and criteria must be complied with strictly. Beyond O-RAN, there are no restrictions on Members or Participants dealing with non-Members or – Participants.

4. CONCLUSION

This document contains guidelines and general advice to members in relation to issues of Competition law. **In case of doubt, specific advice should always be sought.**

The extensive range of matters and behaviour, which may be considered – or misinterpreted as – “anti-competitive” should always be borne in mind. **Failure to observe this principle may result in serious consequences for both O-RAN and its Members and Participants.**

It is incumbent on all Members and Participants at all times, not just chairmen of meetings or Working Groups to follow the specific rules and advice contained in this document.

Respecting these guidelines is to the benefit of all Members and Participants of O-RAN.