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[https://www.eclipse.org/org/documents/Eclipse\\_Antitrust\\_Policy.pdf](https://www.eclipse.org/org/documents/Eclipse_Antitrust_Policy.pdf)

### **ECLIPSE FOUNDATION**

#### **ANTITRUST COMPLIANCE POLICY**

The Eclipse technology is a vendor-neutral, open development platform supplying 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. The purpose of the Eclipse Foundation is to advance the creation, evolution, promotion, and support of the Eclipse Platform 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 activities of the Eclipse Foundation, and any committees organized under its auspices, be conducted strictly in accordance with U.S. federal and state antitrust laws and foreign antitrust laws. This policy has been prepared to inform members of the Eclipse Foundation of this obligation.

#### **I. OVERVIEW**

##### **II. Price-Fixing**

Agreements among competitors to fix prices are per se unlawful and the government strictly enforces laws against price-fixing. Competitors may 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
- agree to artificially increase or limit supply

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.

Members should keep in mind at all times that the mission of the Eclipse Foundation is to promote the development of the Eclipse Platform. Accordingly, Eclipse Foundation activities should not involve any individual member's activities in pricing or marketing particular products. To avoid the risk of liability, Eclipse Foundation 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' pricing or marketing practices.

### **III. Agreements To Allocate Markets**

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

### **IV. 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 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 should avoid any discussion or conduct that involves the refusal to deal with a particular third party.

## **II. COMPETITION**

Nothing contained in this policy should be construed to prohibit or limit a member from making, using, selling, marketing, or promoting products that do not embody or make use of the Eclipse Platform. 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.

## **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:

- 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.

- B. Notice of Meetings. All meetings shall be preceded by notice to members, as set forth in the by-laws.
- 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.
- 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 each meeting. After 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.
- E. Distribution of Antitrust Policy. It is the policy of the Eclipse Foundation that a copy of this antitrust policy be distributed to all members.

#### **IV. PROHIBITED MEMBER CONDUCT**

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

- Any 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 costs of procurement, development or manufacture of any product.
- Individual company market shares for any product or for all products.

#### **V. PERMITTED MEMBER CONDUCT**

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

- Members may design, develop, manufacture, acquire or market competitive specifications, products and services.

- Members may join or participate in any other associations, including competitive open-source organizations.
- Members may 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.
- 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.

Members assume responsibility to provide appropriate legal counsel to their representatives regarding compliance with this policy.

If you have a question regarding these matters, contact your own counsel or Jeffrey Neuburger, of the firm of Brown Raysman Millstein Felder & Steiner LLP, which provides counsel to the Eclipse Foundation:

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