

Quality Excellence for Suppliers of Telecommunications (QuEST) Forum

ANTITRUST GUIDELINES

Introduction

The Quality Excellence for Suppliers of Telecommunications (QuEST) Forum (the "Forum") is an association of firms that supply communications products and services worldwide. The Forum's primary purpose is to enhance efficiency, promote best practices and improve quality in the communications industry by establishing and promoting a set of requirements, known as the TL 9000 standard, which industry participants can independently choose to adopt to measure the quality management system ("QMS") practices and achievements of themselves and their suppliers. The Forum produces and disseminates the *TL 9000 Quality Management System Requirements Handbook*, the *TL 9000 Quality Management System Measurements Handbook*, other educational materials, related handbooks and documents; conducts training and hosts best practices seminars for communications service providers, suppliers, third party registrars and other interested parties; and undertakes a variety of global initiatives designed and intended to improve quality and efficiency in the communications industry. More information about the Forum is provided on the QuEST Forum website, www.questforum.org.

In recognition of the fact that many of the Forum's members may be competitors, customers, or suppliers of one another, both the *structure* and the *activities* of the Forum are designed and intended to enhance and not inhibit the competitive process. The structure of the Forum is provided in its Articles of Incorporation and Bylaws. The Bylaws provide organizational structure and procedures for a fair, democratic and impartial governance of the Forum, preserving the ability of all member companies to make independent business decisions regarding their involvement with the Forum and the deliberative process used to promulgate the TL 9000 standard. Furthermore, the Forum has adopted these Antitrust Guidelines to govern all activities of the Forum and its Executive Board, Working Committees, Subcommittees and members in a manner that is consistent with both the letter and the spirit of applicable antitrust laws. Although in certain respects these Guidelines may be stricter than what antitrust laws require, they should nevertheless be observed at all times and to that end are incorporated by reference into the Forum's official Code of Conduct. These Guidelines are thus required to be reviewed and adhered to by all member companies and Forum staff.

The Antitrust Laws

Members of the Forum do business in many states and countries, each of which may have its own antitrust laws applicable to the individual and group conduct of Forum members. The Forum makes no statement regarding the sufficiency of these Antitrust Guidelines to shield or limit any liability of its members, and is not responsible for or liable for each member's conduct. Each member is hereby advised to seek independent advice from their own antitrust counsel regarding their involvement with and participation in Forum activities. The Forum is headquartered in the United States but conducts meetings and operations worldwide. A chief example of the antitrust laws applicable to the Forum is the U.S. Sherman Act. Section 1 of the Sherman Act provides that every "contract, combination or conspiracy" in "restraint" of interstate commerce is illegal, and imposes severe sanctions (including fines and criminal punishment) for organizations and individual employees who create or administer such restraints. The "contract, combination or conspiracy" in question need not be written or formal; this is why, as a matter of prudence, subjects which cannot lawfully be agreed upon by competitors generally should not even be discussed by them. There are other potentially applicable antitrust laws, such as the U.S. Federal Trade Commission Act's prohibition of "unfair methods of competition" and statutes of individual states.

In the context of trade associations, the following types of concerted behavior have been attacked as “restraints” illegal under the antitrust laws:

- Agreements among members of a trade association to “boycott” or not to deal with certain other parties (e.g., where several competing parties agree not to trade with a company unless it joins a trade association).
- Adoption by a trade association of specifications that other parties are not reasonably able to meet and that give the trade association members a competitive advantage in manufacturing or marketing (e.g., where a group of metal pipe suppliers prevents a plastic pipe specification from receiving fire code certification despite technical equivalence).
- Policies of a trade association requiring or encouraging members to refrain from competitive bidding.
- Agreement among competitors to control or limit production, including group agreements to discontinue product lines or limit access to services
- Allocation of customers or markets, including inappropriate discussions regarding specific marketing plans and business strategies that tend to inhibit rather than promote fair competition
- A trade association imposing subjective membership criteria that is arbitrary in nature and not substantially related to the legitimate purposes of the association
- Unreasonably refusing any access for non-members to the trade association’s key benefits, particularly when necessary to successfully compete in the industry
- Collection and dissemination of economic data without use of strict guidelines to keep the data anonymous and guide the appropriate use and collection of such data
- Standard setting activities that allow collusion among competitors, that limit aspects of rivalry without sufficient offsetting benefit, or are the result of a process manipulated by some members to the disadvantage of others

These categories are illustrative. Any concerted activity that tends to exclude competitors or reduce competition may create concern under the antitrust laws. In general, members must remain vigilant and strive to detect and avoid any activities that might negatively impact their ability to make completely independent business decisions at all times.

Generally, standard-setting trade associations like the Forum are considered pro-competitive and therefore consistent with the antitrust laws, because the object of such standards is to enable the products and services of many different vendors to work effectively with one another and to promote efficiency. This is especially likely where, as with the Forum, both the *purchasers* as well as the *manufacturers* of an article are involved in the standard-setting effort. However, it is acknowledged and recognized that while standard setting activities may often have pro-competitive effects, they also present certain antitrust risks due to the potential for the type of conduct addressed above. Therefore, the Forum has established and maintains strict rules and procedures for deliberating and deciding on revisions to the TL 9000 standard.

Guidelines

The Forum and its TL 9000 standard are designed to facilitate competition in the supply of all communications products and services worldwide. By publishing a uniform set of Quality Management System (QMS) requirements, the Forum endeavors to improve efficiency between carriers and suppliers, and to promote the highest level of quality for all communications services ultimately provided to customers. In order to assure that the Forum complies with the letter and spirit of the antitrust laws, the following Guidelines shall apply (a) to all meetings and other activities of the Forum and its Executive Board, Committees and Working Groups, and (b) to activities of the Forum's members in their conduct of Forum business, including with Forum staff.

- 1. Forum membership must not obligate or create a presumption that a member shall use or become registered to the TL 9000 standard.** The objective of the Forum is to adopt QMS requirements that are likely to win widespread approval due to their relevance and efficiency, thus the Forum encourages use of the TL 9000 standard by all communications industry participants. The decision whether to use, or require use of the TL 9000 standard, however, nevertheless remains solely within the private and discreet supply chain relationship between individual communications suppliers, service providers and other interested parties. Thus, a carrier must determine on its own whether to mandate compliance with all or part of the TL 9000 requirements in its procurement contracts with suppliers, and a supplier in turn must determine on its own whether to agree to such a mandate in its contract with a carrier, and whether to include similar mandates in its supply subcontracts. A Forum member's vote on a particular TL 9000 requirement simply means that the member favored the Forum's adoption of that requirement, not that the member is obligated to use the requirement in all or any of its supply relationships.
- 2. Forum membership must always be open to communications carriers and suppliers on reasonable terms.** The objective and reasonable criteria for and obligations of membership are stated in the Forum's Bylaws. The Forum actively recruits members from all regions and technologies, and from among all communications companies regardless of size.
- 3. The process by which TL 9000 requirements and measurements are adopted, modified or terminated must be open and fair.** Working Committees and Subcommittees develop and study proposals for adopting, modifying or terminating a particular TL 9000 requirement or measurement, but it is the general membership that must take such action by a supermajority two-thirds vote. Advance notice should be given to all members that a stated TL 9000 requirement is to be voted on by formal ballot to be sent to all members with a reasonable time for deliberation and response. An opportunity for members to communicate with each other about such a proposal should be provided wherever practicable. Per the Bylaws, voting rights are per member category, with no member organization having more than one vote, so that a company's vote does not depend on the number of its individual representatives attending a meeting, or its revenues or other indicia of size. The Forum's Bylaws contain further detail on the procedures used for the adoption, modification and/or termination of TL 9000 requirements and measurements.
- 4. Discussion in Forum meetings must avoid communications of pricing information, sales to particular customers or market segments, and other competitively sensitive information must be avoided.** The Forum recognizes that many of its members compete, so subjects that competitors should not discuss with each other also should not be discussed in Forum meeting proceedings, during meeting recesses, or in Forum communications. These subjects include, but are not limited to, information about current prices (including discounts and credit terms), future price strategies, decisions whether or not to market to particular customers, and confidential strategies for introduction of new products or entry into new markets. In general, avoid discussion of any topics that could lead to even the implication that the type of information shared may restrain the ability of market rivals to make completely independent business judgments.

- 5. Benchmarking of all data by the Forum should be conducted with appropriate safeguards.** On occasion, the Forum may desire to conduct benchmarking of quality related data of its members and/or non-members (“participants”). Benchmarking can be pro-competitive by giving participants information that leads to enhanced efficiency and improved quality. However, if improperly done, the exchange of data can lead to assertions that the participants are signaling pricing plans and/or seeking agreement on price levels. Accordingly, when the Forum conducts benchmarking, it should do so through an independent third-party; legal counsel should be consulted; and there should be enough participants to assure the anonymity of the information in the benchmarking report. The independent party should collect the data from participants through a written or electronic survey to create a record of the type of information disclosed; present the collected data to survey participants in an aggregate form (e.g., means, quartiles or percentiles) in which each participant can compare its own data to the aggregate figures but not to those of any other individual participant; and use broad time periods rather than a snapshot of current data. The data collected should be historical only. The data submitted should be kept confidential and maintained without traceability of individual participants identities back to their submitted data. No participant should be given access to the data submitted by another participant. Participants analyze the data and make independent business decisions based on the data, without any required reference to the decisions of other participants. Benchmarking activities should follow the Benchmarking Code of Conduct.
- 6. Forum members are not prohibited from establishing different QMS requirements, or from participating in other joint efforts to develop such requirements.** Membership in the Forum does not preclude a member from instituting its own QMS requirements or mandating that its suppliers follow such requirements in addition to or in lieu of the TL 9000 standard. Membership similarly does not preclude a member from engaging in efforts with other firms or trade associations to develop QMS requirements.
- 7. The TL 9000 standard should be made applicable to all industry participants and others interested in quality requirements on reasonable terms.** The TL 9000 standard is intended to be a general standard applicable to all participants in the communications industry, regardless of technology. The TL 9000 standard and the Forum’s related publications and services related are to be made available not only to members but also to non-members on payment of reasonable charges (e.g., the purchase price for handbooks and other materials, and fees for seminars, best practice conferences, etc).
- 8. Communications by the Forum should be consistent with these Guidelines and avoid references to the Forum as a market participant.** Actions taken at Forum meetings, Forum internal correspondence, press releases, materials available on the Forum’s website and other Forum communications should be consistent with these Antitrust Guidelines. One important rule is that while the Forum establishes the TL 9000 standard for consideration of individual members to adopt, the Forum itself *is not a participant* in a market. Accordingly, the Forum is not seeking to establish “market share.” Forum communications should avoid use of terms like “QMS requirement market,” “Forum market share,” market “dominance,” or the like. While the Forum cannot control what individual members and outside media may write about the Forum and its activities, communications that are not consistent with these Antitrust Guidelines shall not be endorsed by the Forum, included in Forum materials, or linked from the Forum website.

These Antitrust Guidelines were first approved by the Forum Executive Board and by the Forum membership in 2001 and revised in 2010.