

NICC STANDARDS LIMITED (NICC)

NICC Anti-Trust Compliance Policy – Issue 1

1 Introduction

The Board has adopted this Anti-Trust Compliance Policy in order to provide guidelines to Members for the purpose of ensuring that the Members themselves and NICC complies with relevant anti-trust laws in the conduct of their activities within NICC.

2 Definitions

Paragraph 8 contains definitions of certain terms and expressions used in this Anti-Trust Compliance Policy.

3 Anti-trust law

3.1 All Members are subject to European and UK anti-trust laws with regard to their activities as Members. In addition, NICC itself is also subject to these laws as a standards body, particularly with regard to its decisions on the adoption of Standards.

3.2 In Europe, the basic anti-trust rules are contained in Articles 81 and 82 of the EC Treaty, which can be briefly summarised as follows:

- (a) Article 81 prohibits agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between member states and which have as their object or effect the prevention, restriction or distortion of competition within the common market; and
- (b) Article 82 prohibits any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it in so far as it may affect trade between member states.

3.3 In the UK, the anti-trust laws applicable to NICC and its Members in relation to their activities as Members are comprised within the Competition Act 1998. This Act contains two main prohibitions modelled upon Articles 81 and 82 of the EC Treaty namely:

- (a) the “Chapter 1 Prohibition” which, under Section 2(1), prohibits agreements between undertakings, decisions by associations of undertakings or concerted practices which may effect trade within the UK and have as their object or effect the prevention, restriction or distortion of competition within the UK; and
- (b) the “Chapter II Prohibition” which, under Section 18, prohibits any conduct by one or more undertakings which amounts to an abuse of a dominant position in a market in so far as it may affect trade within the UK.

3.4 This Anti-Trust Compliance Policy does not set out a detailed explanation of the relevant anti-trust laws or how they might be applicable to Members in relation to their activities as Members. Members should obtain their own legal advice experienced in anti-trust law if they have particular concerns or if they wish to inform themselves in more detail about these matters.

4 Guidelines for Anti-trust Compliance

In order to minimize the risk of anti-competitive behaviour whilst participating as a Member, the following guidelines should be observed. All participants in NICC (ie NICC Directors, the Secretariat, their staff, Members, Working Group Representatives, experts and other participants) should abide by this Anti-Trust Compliance Policy.

4.1 Membership

- 4.1.1 Admission to membership of NICC should be based on clear, neutral and objective criteria, and open to all interested parties on reasonable terms and conditions without unfair restrictions. Attention is drawn to the following sections of the Articles:
- (a) Article 2, which sets out the eligibility requirements for membership of NICC;
 - (b) Article 4, which sets out the procedure for application for membership of NICC;
 - (c) Article 5, which sets out the circumstances in which a Member may withdraw from membership of NICC; and
 - (d) Article 6, which sets out the circumstances in which a Member's membership of NICC may be terminated.
- 4.1.2 Every refusal or termination of NICC membership must be justified and the affected person should always be given an explanation of the grounds for the refusal or termination.
- 4.2 Participation in Working Groups
- 4.2.1 Participation in Working Groups should be open, so that all Members have the opportunity to participate in a Working Group by nominating one or more Working Group Representatives in accordance with Article 22.2 of the Articles.
- 4.2.2 The rules and procedures applicable for work within NICC should be transparent, i.e. sufficiently specified, clear and detailed. In particular, participants in Working Groups need to be aware of the procedures applicable for adoption of decisions (whether in a meeting or otherwise). In case of any doubt, clarification on the procedure should be sought from the chairman and/or the secretary of the Working Group in the first instance.
- 4.3 Meetings
- 4.3.1 The chairman and/or the secretary of a meeting of each Working Group should give notice of each meeting to each Working Group Representative and via the NICC intranet in accordance with Article 22.4.2 of the Articles. The notice should contain an agenda of the matters to be discussed at such meeting. The meeting shall follow the prepared agenda and only matters included on the agenda should be discussed.
- 4.3.2 Concise minutes of the meeting of each Working Group should be kept. The minutes need not be verbatim but should summarise all matters discussed in the meeting and reflect what actions, if any, were taken. The views of individuals shall be recorded where they so request, for instance if they wish to record formal disagreement. The minutes of the preceding meeting should be approved at the beginning of each following meeting.
- 4.4 Activities in NICC
- 4.4.1 Discussions, communications or any other exchange of information in all NICC meetings, on the edge of all NICC meetings (e.g. informal discussions, social gatherings, corridor talks etc.) as well as during any activity in NICC should not have as their subject matter the following topics, discussion of which (among other things) is prohibited by anti-trust law:
- (a) pricing strategies or product pricing;
 - (b) terms and conditions of sale including discounts and allowances, credit terms, etc;
 - (c) production levels or capacity;
 - (d) limitation of technical development or investment;
 - (e) allocation of sales territories, markets or customers;

- (f) market shares;
- (g) submitted bids or intentions to bid;
- (h) preventing anybody from gaining access to any market or customer for goods and services;
- (i) refusals to deal or do business with competitors, vendors or suppliers; and
- (j) ongoing litigation or threatened litigation.

4.4.2 Voluntary, unilateral, public, ex ante disclosures of licensing terms by licensors of essential IPRs, for the sole purpose of assisting Members in making informed (unilateral and independent) decisions in relation to whether solutions best meet the technical objectives, are not prohibited. It is therefore not prohibited for members of a Working Group to inform the Working Group of the availability of such licensing terms in compliance with Section 5.1 of the IPR Policy. Where any such disclosures are made, any discussion and/or negotiation of any licensing terms, including any price term, shall not be conducted within NICC.

4.4.3 In the event that a participant becomes aware of any discussion, communication or exchange of information that appears to be leading to restraints on competition of any kind, such participant should raise the issue, seek to terminate such discussion, communication or exchange of information or absent themselves or separate from it.

4.5 Other

4.5.1 Standards produced as the result of the Work Programme need to be available for everyone on reasonable terms. Any conditions pertaining to the use of such Standards must be visible on their face.

4.5.2 Nobody should be obliged to adopt any Standard, nor should any efforts be undertaken that are intended to prevent the manufacture, sale, or supply of any product or services not conforming to any adopted Standard.

4.5.3 In the event of inconsistency between this Anti-Trust Compliance Policy and relevant anti-trust laws, the anti-trust laws shall prevail.

5 "Do's" and "Don'ts" for participants in Working Groups

The following instructions are intended to provide only summary guidance for the participants in Working Groups and do not replace the detailed guidelines set out above.

5.1 Please do:

- (a) use all reasonable efforts to comply in all respects with relevant anti-trust laws in connection with all NICC activities;
- (b) comply with the rules and procedures when chairing a meeting as well as when attending and participating in a meeting;
- (c) focus any discussions or any exchange of information in NICC on standardisation issues only;
- (d) be mindful that standards development activities within NICC should promote competition and benefit consumers;
- (e) create Standards based on solutions which best meet the technical objectives of the UK telecommunications sector;
- (f) comply with Section 5.1 of the IPR Policy and Section 4.4.2 of this Anti-Trust

Compliance Policy if you decide that you wish to disclose price and terms for licensing your Essential IPRs; and

- (g) in case of any concern, consult with your own legal counsel as appropriate.

5.2 Please do not:

- (a) engage within NICC in activities intended to restrain competition or harm consumers;
- (b) attempt to set or control price or terms of product, service or license fees in the course of any NICC activity;
- (c) discuss any disclosure of licensing price or terms, product or service price or terms, pricing methods, profits, profit margins, cost data, production plans, market share or territories in the course of any NICC activity; or
- (d) attend meetings of NICC where procedural rules are not followed.

6 **Law and Regulation**

This Anti-Trust Compliance Policy shall be governed by the laws of England and NICC and the Members agree to submit to the non-exclusive jurisdiction of the English Courts in respect of any dispute arising under or in connection with this Anti-Trust Compliance Policy.

7 **Breach of this Anti-Trust Compliance Policy**

Any breach of this Anti-Trust Compliance Policy by a Member shall be subject to potential action against the Member under the Articles, including possible termination of membership of NICC in accordance with the procedure for termination set out in the Articles.

8 **Definitions**

- (a) **Articles** shall mean the Articles of Association of NICC as adopted from time to time.
- (b) **Board** means the board of Directors for the time being of NICC.
- (c) **EC Treaty** means the Treaty establishing the European Community as amended, replaced or consolidated from time to time.
- (d) **Electronic Communications Networks** and **Electronic Communications Services** shall have the meanings ascribed to those terms in Section 32 Communications Act 2003.
- (e) **Equipment** means any system, or device fully conforming to a Standard.
- (f) **Essential** as applied to IPR means that it is not possible on technical (but not commercial) grounds, taking into account normal technical practice and the state of the art generally available at the time of standardisation, to make, sell, lease, otherwise dispose of, repair, use or operate Equipment or Methods which comply with a Standard without infringing that IPR. For the avoidance of doubt in exceptional cases where a Standard can only be implemented by technical solutions, all of which are infringements of IPRs, all such IPRs shall be considered Essential.
- (g) **IPR** means any intellectual property right conferred by statute law including applications therefore other than trademarks. For the avoidance of doubt rights relating to get-up, confidential information, trade secrets or the like are excluded from the definition of IPR.
- (h) **IPR Policy** means the IPR Policy of NICC as adopted from time to time.

- (i) **Manufacture** means production of Equipment.
- (j) **Member** means a member of NICC. References to a Member shall wherever the context permits be interpreted as references to that Member and its Group Companies.
- (k) **Methods** means any method or operation fully conforming to a Standard.
- (l) **Secretariat** means the person fulfilling for NICC the role of Secretariat, as such role is defined in the Articles.
- (m) **Standards** means standards, technical specifications, service descriptions, information notes, guidelines, codes of practice and other forms of documentation relating to the interconnection and interoperability in the UK of Electronic Communications Networks and Electronic Communications Services.
- (n) **Working Group** means a Working Group of NICC which is undertaking a particular element of NICC's work programme.
- (o) **Working Group Representative** means the representative of a Member on a Working Group.