

GSMA Compliance Manual

1. Antitrust Compliance Policy Statement

It is the GSMA's policy, as outlined in this Manual (the 'Compliance Policy'), that all of its business dealings are carried out in full compliance with applicable anti-trust legislation. The GSMA is fully committed to ensuring that this policy is adhered to and has implemented procedures to educate on and to monitor compliance.

All employees, consultants and elected representatives/officials of the GSMA are under an obligation to conduct all business dealings in accordance with any applicable antitrust legislation. Each GSMA employee, consultant (as appropriate) and official is required to read and follow the Compliance Policy. This requirement applies in particular to the members of the CEO Board and EMC and to chairs and deputy chairs of any other GSMA group or fora.

Members and Associate Members are already under a general obligation to conduct all activities connected with the GSMA in accordance with any applicable antitrust legislation. In the unlikely event that a Member does not co-operate with the GSMA in such circumstances, the GSMA may consider suspension or termination of membership.

Confidentiality

Association employees and consultants, and Members and Associate Members of the GSMA are encouraged to report any possible infringement of the GSMA's Compliance Policy. In the investigation of any complaint the Association undertakes to respect the right to confidentiality of the complainant.

Consequences of Infringements of Antitrust legislation

How infringements of anti-trust law are sanctioned depends on the legislation applicable. Generally, however, sanctions take the form of substantial fines on each participant, which for the GSMA could be imposed on the GSMA and/or its Members and Associate Members. Under some legislative systems criminal sanctions may be imposed on individuals.

This document addresses the following issues:

- **Overview of Antitrust Policy**
- **Investigations by regulatory and Antitrust Authorities**
- **Responsibility for Antitrust Law Compliance** (Appendix 1)
- **Guidelines on Document Creation & Storage** (Appendix 2)

2. Overview of Antitrust Policy

2.1 Introduction

As an international organisation the activities of the GSMA may be subject to a variety of antitrust legislation, either national or regional (such as the European Union ('EU')). Although the scope and content of antitrust legislation may vary from region to region, generally speaking two types of behaviour will be affected:

- **Agreements between competitors, which, for example, seek to share markets, fix prices or otherwise affect competition (cartel agreements).**
- **Where companies in a dominant position on a given market seek to abuse that position.**

2.2 Effect of Antitrust Laws

It is important to remember that even if you reach an agreement in one country the laws of another country or region may still apply. Some antitrust laws apply as long as the agreement or behaviour concerned has effects within the country or region governed by those laws. Thus, an agreement reached between a US company and a Russian company that affects their conduct in EU territory will fall under EU antitrust legislation. Naturally, U.S. and Russian antitrust legislation may also be applicable.

Additionally, if an agreement has to its effect to distort competition, it will fall under the antitrust laws whatever its object is. Hence, even an agreement with a justifiable object on the face of it can be illegal if its effect is to distort competition. The fact that the participants in the agreement do not think that the agreement will affect competition is irrelevant if it later turns out that it does.

Conversely, an agreement that does have as its object to distort competition can be illegal even if it is not implemented and hence has no negative effect on the market.

2.3 Agreements Distorting Competition

As a global trade association, work carried out within the GSMA and its members, will be viewed by an antitrust regulator as collaboration between competitors, which could constitute an agreement that may hamper competition. Any agreement, whether verbal or in writing, is prohibited. Main examples of agreements distorting competition are agreements that seek to fix prices, share markets or otherwise share strategic information that enables competitors to plan ahead and thereby put normal competition on the market out of play.

Examples of Anti-competitive Agreements

Price-Fixing: Any price fixing agreement, whether verbal or in writing, is prohibited. The prohibition covers direct and indirect price fixing. An antitrust violation may occur from simply sharing price information with another network operator or another supplier. Examples of what may be considered as price fixing are:

- In a meeting, charges to consumers are discussed and it is agreed that no member will charge less than a certain amount.
- It is agreed that all participants in a meeting shall end to offer certain benefits currently provided to consumers entering into subscription agreements.
- Associate Members enter into a discussion to coordinate prices charged to operators.

Market Sharing: Agreements involving the allocation or sharing of markets are also prohibited. Illustrative examples of what may be considered as market sharing include:

- During an after-meeting drink you enter into discussion with a competitor concerning the difficulties of market penetration. You agree that the most sensible solution would be for both of you to withdraw from some of the markets in which you are operating in order to concentrate on the remaining ones. You agree to divide up the markets between you.
- A decision within a Group Meeting to allocate an item on the agenda as a closed item due to concerns that permitting Associate Members access to the discussion might enable them to compete more effectively with Members.
- A suggestion to the effect that group participants should encourage the Members and Associate Members they represent to refrain from purchasing any product, equipment, or services from any particular supplier or from dealing with a particular supplier.

Information Sharing: Any sharing of strategic information enabling competitors to plan ahead and coordinate their market behaviour in a way that impacts competition is prohibited. Examples include:

- During a Group Meeting concerning international roaming charges, participants give concrete examples of the IOT applied by the operator they represent.

2.4 Abuse of a Dominant Position

Where a company enjoys a dominant position on a market, it must take care not to use that position to obtain advantage that it could not obtain in the absence of such a position. Members or Associate Members of the GSMA may be individually dominant on the markets on which they operate. Although what constitutes dominance requires a complex market analysis, high market share (above 50%) or the ability to price independently of competing operators or suppliers can indicate dominance. It is also possible for companies to be collectively dominant if they act together on a particular market as a collective entity vis-à-vis their competitors, their trading partners and consumers.

Dominance in and of itself is not contrary to antitrust law. To violate anti-trust law the dominant company or companies must abuse their market power i.e. use that power to obtain advantages they could not otherwise obtain. This effectively involves conduct likely to damage the competitive structure of the market.

Examples of prohibited conduct include:

Excessive Pricing: this involves charging prices that are excessive in relation to the economic value of the service provided.

Below Cost Pricing: under some anti-trust laws charging very low prices coupled with the intention to eliminate a competitor by doing so may constitute abusive conduct.

Exclusionary Conduct: behaviour that attempts to exclude or weaken the position of a competitor on the market will normally constitute an abuse.

2.5 Investigations by Regulatory and Antitrust Authorities

Under most antitrust laws, regulatory and antitrust authorities have far-reaching power to request information and to inspect the premises of a company, with or without warning. Such authorities may also request information over the phone or send a letter formally requesting information.

Should an investigation be conducted into the affairs of the GSMA information could be requested from either the Association and/or from Members and Associate Members. Inspections could take place at the premises of the GSMA and/or at the premises of Members.

The GSMA is eager to assist regulatory and antitrust authorities in the conduct of any investigation. However, difficulties may arise should GSMA employees or representatives or Members and Associate Members take it upon themselves to respond to requests for information from such authorities without first obtaining legal advice. Such persons may not have a complete overview of all the relevant information in the area concerned. Moreover, certain GSMA documents may be Legally Privileged – documents containing specific advice from outside legal counsel, which does not have to be provided to the investigating authority.

In addition should false or misleading information concerning the activities of the GSMA be given inadvertently, the Association may be held liable.

Requests for Information

Should a GSMA employee or consultant or a GSMA Member or Associate Member receive a request for information or an inspection concerning GSMA activities from a regulatory or anti-trust authority the issues should be immediately be referred to GSMA legal department.

It should be noted that this only applies to an authority's requests for information from companies who are Members or Associate Members where the request directly concerns GSMA activities. If the request relates to the individual activities of the company there is no need to inform the GSMA.

No information should be provided to regulatory/antitrust authorities unless either the Association's legal department has sanctioned it. The person who receives the request should take a careful note of anything said to the investigating authority during the course of the telephone conversation and give a copy of this information to the GSMA legal department.

In short, should a request for information or an inspection occur:

- Immediately contact the GSMA Legal Department
- Do not question the investigating agent's right to carry out the inspection, but:
- In case of an inspection, request the agent to identify himself and provide the search warrant
- In case of a telephone call, ask for the purpose of the call, what it relates to and for what the information will be used
- Do not destroy documents, e-mails and other sources of documentation

Appendix 1: Responsibility for Antitrust Law Compliance

As any GSMA employee, consultant, Member or Associate Member may cause an antitrust violation, each has the responsibility of ensuring that their behaviour and that of others complies with antitrust law. The extent of this responsibility may vary depending on the task performed.

GSM Association Employees and Consultants

All Association employees and consultants are required to:

- Read and ensure that they fully understand the Compliance Manual;
- Review their work and ensure that it does not infringe the Association's Compliance Policy;
- Seek immediate advice in the event that a compliance issue arises.

Members and Associate Members

Members and Associate Members are required to ensure that each of their employees or representatives who participate in the activities of the GSMA is fully briefed as to the Compliance Policy of the Association as outlined herein.

Group Members

Group members (including Regional/Working/Advisory Groups, Task Forces, and Fora) must ensure that they do not take part in conversations or actions in breach of the GSMA's Compliance Policy. Where a Group member attends a meeting or even discussion over coffee, at which antitrust sensitive issues are discussed, he should refuse to contribute and request that it be terminated immediately. If the discussion continues the member should register his objection and leave the room. The discussion should be reported to the GSMA's Legal Affairs department.

Chairs/Deputy Chairs and GSMA Directors

Within the context of a group meeting, the chair, assisted by the GSMA Director if present, is responsible for ensuring compliance with the Compliance Policy. Group chairs are required to:

- Regularly remind group members of the contents of the GSMA's Compliance Policy;
- Ensure that agendas state that the meeting will be conducted in accordance with the Compliance Policy;
- Meeting agendas must be strictly adhered to or any amendment noted;
- If any specific agenda item is designated as closed, or a document restricted in access rights e.g. to Associate Members, this designation should be transparent and supportable by objective reasons. For further information on this point see PRD AA 23;
- Chairs/deputy chairs must file GSMA documents separately from their other documents;
- Should regulatory or antitrust authorities require information concerning GSMA documents or activities immediately inform the GSMA's Legal Affairs department;
- Questions involving the disclosure of sensitive information must be dealt with appropriately;¹
- Minutes must reflect the true content of the discussion and the language used must be concise and accurate, noting any anti-trust concerns if they arise.

¹ E.g. if a Group member asks whether he may raise a sensitive question it is suggested that the chair/deputy chair respond as follows: "As a GSMA chair, I can respond to any questions concerning the activities of the Association. However, if the question relates to matters outside the scope of GSMA activities I must ask that you to stop due to antitrust concerns".

Appendix 2: Guidelines on Document Creation & Storage

Scope

These Guidelines cover all GSMA documents, directors and employees in the course of the GSMA's business. All Association employees must follow these Guidelines. Elected officials acting as representatives of the GSMA are encouraged to file documents relating to GSMA activities separately from their normal business activities and to follow these Guidelines.

The destruction of any documents other than pursuant to the guidelines set out in this retention programme is strictly prohibited. In particular no documents should be destroyed outside the framework of these guidelines because of anticipated anti-trust consequences.

Document Creation & Storage Guidelines

All storage of documents, which are created or received by the GSMA, should comply as follows:

- all draft documents be deleted within 30 days of adoption of a subsequent draft or final document;
 - no documents should be destroyed once there is a prospect of a an antitrust investigation or because of anticipated antitrust consequences;
 - all final, authoritative documents should be kept for as long as necessary;
- specific legal requirements may apply to certain types of documents and should be complied with.
- effective compliance and regular enforcement of these guidelines is key. Sporadic compliance may be seen as a strategic bad faith destruction.

Please note, when writing/composing/editing any document, for example, an email, a memo, a set of Guidelines, a PRD, pay specific attention to the language used. This is particularly important when sending emails. The casual feel of such correspondence often gives rise to ill-considered statements. Before sending an email consider whether you would object to your boss or a regulatory or antitrust authority reading it. If you would, do not send it.

Any GSM Association employee, consultant or elected official of the Association who by his conduct and/or business dealings intentionally or negligently breaches the GSMA's Compliance Policy will be subject to investigation and/or disciplinary action. In cases of a serious breach of the Compliance Policy, such behaviour will be deemed to constitute gross misconduct and may result in immediate suspension and/or dismissal either from employment with the Association or, as referred to above, from Membership or Associate Membership of the Association.