

# *Trusted Connectivity Alliance Competition Law Compliance Programme*

The Trusted Connectivity Alliance Board of Directors has decided that competition law compliance should be accorded the highest priority. Any Trusted Connectivity Alliance member who violates the rules established in this programme will be subject to immediate termination as a Trusted Connectivity Alliance member.

The policies established in this competition law compliance programme should be interpreted in light of the basic goals of the Trusted Connectivity Alliance, namely to promote interoperability and the rapid development of widely available specifications that will foster openness and competition in the SIM/eSIM/eSE/iSE/iSIM and related hardware/software market to the benefit of consumers.

In seeking to comply with the competition laws, the Trusted Connectivity Alliance Board, working group chairmen and members should abide especially by a few overarching principles. In particular, the operation, activities, and decision-making of the Trusted Connectivity Alliance should:

- Further consumers' interest in the rapid development of accessible and widely available specifications to fully exploit the advantages of the SIM/eSIM/eSE/iSE/iSIM and related hardware/software extensions and the SIM application toolkit to support value added services and technical development in relation to GSM and other mobile phones, networks and connected devices.
- Be transparent and permit genuine and effective participation by SIM/eSIM/eSE/iSE/iSIM industry participants.
- Avoid any collusion among Trusted Connectivity Alliance members (and others) that would restrict competition.

## **1. General antitrust compliance rules on operation of the Trusted Connectivity Alliance**

To avoid even the appearance of improper action, Members must in all communications with other Members or other competitors avoid entering into discussions or making explicit or tacit agreements, or coordinating their conduct regarding:

- prices
- discounts
- credit policies or other terms of sale with customers or suppliers
- costs
- margins
- inventories
- allocation of customers, markets, territories, or
- exchanging any other confidential or proprietary information about the company or its products, services or customers or a competitor or its products, services or customers.

The Trusted Connectivity Alliance or its Members may not establish or even try to establish minimum or maximum prices, to stabilize prices or to exchange non-public or future price information with other Members or other competitors.

Members may not be involved in any division or allocation of customers, territories or product markets with other Members or other competitors. Likewise, the Trusted Connectivity Alliance and its Members must avoid any agreement to limit or suppress the quality or quantity of goods, services or intellectual property by restricting the development, production or sale of new products, services or intellectual property. Oral as well as written agreements are forbidden.

If a Member begins to discuss product prices, terms of sale, allocation of markets or other prohibited topics, even in a seemingly casual manner, in the context of a gathering of some or all of the Members of Trusted Connectivity Alliance or within any working group, discussion of the topic shall be ceased immediately and a record shall be prepared of the meeting. If such discussion is not stopped, the meeting itself must be terminated and Members must leave the room. If such a discussion is brought up in the context of a Directors' Meeting, Working Group meeting or Working Group sub-group meeting, the Executive Officer, the head of working group or the leader of a BDG, TDG or subgroup shall take special care to ensure that these rules are observed by all parties present at the meeting.

## 2. Conduct of Trusted Connectivity Alliance Meetings and Events

Trusted Connectivity Alliance has put in place the following best practices for the conduct of its formal meetings in order to ensure compliance with competition laws:

- A written invitation shall be sent together with an agenda to participants at each Trusted Connectivity Alliance meeting. Discussions during meetings should reflect the agenda. Minutes of each meeting should be drafted accurately and comprehensively to reflect the discussions that took place at the meeting.
- The agenda for meetings shall start with the following notice:  
***Attendees are kindly reminded that Trusted Connectivity Alliance is committed to complying with all relevant antitrust and competition laws and, to that end, has adopted a Competition Policy, compliance with which is a condition of continued Trusted Connectivity Alliance participation. Failure to abide by these laws can have extremely serious consequences for Trusted Connectivity Alliance and its participants, including heavy fines and, in some jurisdictions, imprisonment for individuals. You are therefore asked to have due regard to this Policy today and in respect of all other Trusted Connectivity Alliance activities.***
- The presence of a Trusted Connectivity Alliance Secretariat representative or Working Group Chair is essential during all Trusted Connectivity Alliance meetings including committee meetings – and Trusted Connectivity Alliance meetings must not take place in their absence.
- At all meetings, the Trusted Connectivity Alliance Secretariat representative or Working Group Chair has the right to react immediately to potentially inappropriate discussions by giving suitable guidance (i.e. indicating that such discussion is not permitted in Trusted Connectivity Alliance meetings) and by bringing any potentially illegal behavior immediately to an end. Where this cannot be achieved, the Trusted Connectivity Alliance Secretariat representative or Working Group Chair has the right to end the meeting. This shall be recorded in the minutes of the meeting concerned.
- If in doubt on the legality of a particular topic, the Trusted Connectivity Alliance Secretariat representative or any of the attendees at a meeting may ask for the discussion to be put on hold until external legal advice has been sought.

**Warning!** For antitrust/competition enforcement, it is irrelevant that the illegal agreement was reached at an informal setting rather than in a formal meeting. It is crucial that Trusted Connectivity Alliance members and staff respect competition law and avoid commercially sensitive subjects during social gatherings organized by Trusted Connectivity Alliance just like at formal meetings.

### 3. Competition/Antitrust Compliance in MMP Process

The marketing monitoring activities of Trusted Connectivity Alliance are to be conducted at all times in compliance with competition/antitrust laws.

The collection and distribution of certain statistical data by trade associations is considered under competition law to be legitimate and useful, **provided there are strict safeguards in place**. To this end, the MMP process is conducted in the following manner to ensure it adheres to best antitrust practices in particular:

- All statistical data is **only** to be sent to the Neutral Party (Squaris). It is strictly prohibited to share this data with any other MMP participant.
- The data must be sent in encrypted form so that it can only be accessed by Squaris #2. The data will be destroyed after one month.
- The MMP is a blind process. Each participant is given an ID# to protect anonymity that is known only to Squaris#1. This ID# should **not** be shared with other participants. To maximize confidentiality, participants should also take care to avoid divulging this information to any other person, including Squaris #2.
- The MMP report presents **aggregated data only**. As a general rule, the provision of data with at least 3 participants should be compatible with competition/antitrust law. If fewer than 3 participants (<3) provide data then the report will contain no information.
- Trusted Connectivity Alliance will endeavor to ensure that any new category will involve at least 5 participants where possible but with at least 3 participants being the minimum required for a new category to be accepted. If a data category consistently shows no report due to fewer than 3 participants then the Trusted Connectivity Alliance will propose the aggregation of this category with another product category or geographic region. If this cannot be achieved then the Trusted Connectivity Alliance will remove the category from the report.
- In general, no other information exchange relating to data – including historical data – is allowed within Trusted Connectivity Alliance in the absence of specific legal advice.

### 4. Trusted Connectivity Alliance Membership Policy

#### Accepting new members

From time to time the Board will be called upon to decide whether to admit new members to the Trusted Connectivity Alliance. The Board should do so in light of the objectives and best interests of the Trusted Connectivity Alliance as a whole and in light of competition law considerations.

In deciding whether to accept a new member, the Board should fairly and non-discriminatorily determine whether the applicant meets the criteria established for the different Trusted Connectivity Alliance membership categories. The Board's general approach should be to be inclusive, and to allow either membership by any interested company that has a genuine ability to contribute to the work of the Trusted Connectivity Alliance. The Board should exclude any applicant only on the basis of a fair, reasonable and non-discriminatory determination that the applicant does not meet the criteria for membership set forth in the Articles of Association and any subsequent amendment thereof. No applicant should be excluded in order to competitively disadvantage the applicant.

In the event any refusal by the Board to accept an application for membership results in a dispute involving any claim of competitive disadvantage, the Board will consult competition counsel in resolving any such dispute.

## Placement of new members in membership categories

Any applicant wishing to join the Trusted Connectivity Alliance must identify the category of membership in which it wishes to be placed. When considering the application, the Board shall consider the application only with respect to the category selected by the applicant. However, in case the Board refuses the application, the CEO shall consider whether the applicant could be accepted in another category, and if this is the case ask the applicant to modify the application form to apply to a more appropriate category. The Board shall consider the modified application without charging additional application fees.

Any request by a member to change the placement of that member in the membership categories shall be considered by the Board using the same criteria it uses when accepting new members to the category the member wants to move into, and comply with the guidelines on making such consideration outlined above.

In the event any refusal by the Board to accept an application for membership results in a dispute involving any claim of competitive disadvantage, the Board normally should consult competition counsel in resolving any such dispute.

## Review of membership categories

From time to time it may be appropriate to re-evaluate the appropriateness of the Trusted Connectivity Alliance membership categories in light, inter alia, of experience operating under the existing categories and of changes in technical, commercial or competitive circumstances. While it is not necessary to re-evaluate the membership categories under any fixed timetable, it likely would be appropriate for the Board to review this question about once per year. In re-evaluating the appropriateness of the membership categories, it is important to consider competition law implications both of maintaining the existing categories and of any possible modifications to the categories. The Board would be well-advised to consult with competition counsel in connection with any review of membership categories.

Generally speaking, membership categories should reflect the different backgrounds, experiences, knowledge and skills of those falling into the different categories, and thus the different natures of the contributions that members of different membership categories can make to the work of the Trusted Connectivity Alliance. Categories should not be created or maintained that arbitrarily discriminate among different companies active in the SIM/eSIM/eSE/iSE/iSIM and SIM/eSIM/eSE/iSE/iSIM-related business. In evaluating membership categories, the Board should be cognizant of competitive advantages or disadvantages that might result for different industry participants as a result of the maintenance or modification of membership categories. Generally speaking, the Board should seek to avoid creating or perpetuating any competitive disadvantages resulting from any particular definition of membership categories. Most importantly, the Board should seek to ensure that any decisions taken in this area foster consumers' interests in open standards that facilitate interoperability and robust competition in the markets for SIM/eSIM/eSE/iSE/iSIM and related products and services.

## 5. Board Membership

Before calling any annual meeting of Trusted Connectivity Alliance members, the Board should prepare a recommendation on the number of directors to be appointed for the following year and on the membership categories such directors should preferably represent. In preparing such a recommendation the Board should consider, at least, the following factors:

- The number of members in each membership category;
- The activity demonstrated by members in different membership categories towards promoting the goals of Trusted Connectivity Alliance;
- The work plan for the year in question and especially the expertise from different membership categories required to meet the expectations set out in the work plan; and
- The effective functioning of the Board.

In recommending the number of directors and distribution of directors among membership categories, the Board should apply the principles of fairness, reasonableness and non-discrimination towards members and membership categories. The recommendations should be aimed at ensuring the most effective functioning of the Trusted Connectivity Alliance and to this end each membership category should have, within the limits of the Articles of Association, reasonable influence in the Board, especially taking into account the contribution such category has made or is expected to make in the work of the Trusted Connectivity Alliance. At the same time, the recommendation should ensure the effective functioning of the Board and avoid unnecessarily expanding the Board and thereby compromising its effective functioning.

## 6. Working Group Organisation and Participation

### Optimisation of work; assurance of broad participation

To operate effectively, BDGs, TDGs or sub-groups of working groups cannot be too large. Generally speaking, these groups should have no more than 15 members. However, it is important that all members with a genuine interest in and ability to contribute to a working group are able to participate in that group. In order to achieve both objectives (i.e., both effective operation and representative participation), it may be appropriate for the head of working group to divide the work of the any such group into several sub-groups.

In allocating members to any sub-groups, the head of working group should seek to avoid imposing any competitive disadvantage upon any member.

In the event any decision by a head of working group to refuse participation by a member in a working group, or any decision allocating member(s) to particular sub-groups, results in a dispute, the head of working group should consult with the executive officer in seeking to resolve such dispute. In turn, the executive officer normally should consult competition counsel in resolving any such dispute.

### Ordinary Members participation in working groups

From time to time, Ordinary Members (as defined in Board resolutions) may seek to participate in the work of a working group. In considering such requests, the head of working group should consider whether the Ordinary Member has a genuine ability to contribute to the work of the group. If so, and the work of the group would not be disrupted by the participation of the Ordinary Member, the head of working group generally should permit such participation. In particular, the head of working group should seek to include any Ordinary Member in the work of a group if excluding the Ordinary Member would result in competitive disadvantage to that Ordinary Member.

In the event of any dispute involving a refusal by a head of working group to allow participation by an Ordinary Member the head of working group should consult with the executive officer in seeking to resolve such dispute. In turn, the executive officer normally should consult competition counsel in resolving any such dispute, at least where the dispute involves any claim of competitive disadvantage.

### Implementation of the IPR policy

The Trusted Connectivity Alliance IPR policy has been designed with the assistance of outside counsel in order to comply with competition laws. The Board should ensure that the IPR policy is faithfully implemented in order to achieve compliance with the goals of Trusted Connectivity Alliance to foster openness and competition in the SIM/eSIM/eSE/iSE/iSIM and related hardware/software market to the benefit of consumers.

The Board should ensure that the Specifications developed by Trusted Connectivity Alliance are available to anyone who wishes to have them, and that the fees charged by Trusted Connectivity Alliance for providing the Specifications is fair, reasonable and non-discriminatory. The fees for the specifications should be cost driven and reflect the work and investment of money and intellectual property used to develop such Specification. To the extent necessary for the implementation or testing of the Trusted Connectivity Alliance Specifications, the Board shall ensure that any Trusted Connectivity Alliance Document (as defined in

Clause 2.2 of the Trusted Connectivity Alliance IPR Policy) is made available on fair, reasonable and non-discriminatory terms to anyone who wishes to have them, but only when such Document is necessary for implementation or testing of the Specification.