

# Quality Excellence for Suppliers of Telecommunications Forum

## ANTITRUST GUIDELINES

### *Introduction*

The Quality Excellence for Suppliers of Telecommunications Forum (the "Forum") is an association of firms that supply telecommunications products and services worldwide. The Forum's primary purpose is to reduce costs and enhance efficiency in the telecommunications industry by establishing a set of requirements, called "TL 9000," which industry participants can elect 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 System Requirements Handbook*, the *TL 9000 Quality System Metrics Handbook*, educational materials and related handbooks and documents; conducts training seminars for carriers, suppliers, registrars and others concerning the TL 9000 requirements; and undertakes other initiatives designed to improve quality and efficiency in the telecommunications industry. More information about the Forum is provided in Attachment A.

In recognition of the fact that many of the Forum's members are competitors, both the *structure* and the *activities* of the Forum are intended to enhance and not to inhibit the competitive process. The structure of the Forum is defined in its Articles of Incorporation and its Bylaws. The Forum has adopted these Antitrust Guidelines to govern the 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 the Guidelines are stricter than what the antitrust laws require, they should be observed except when in particular situations legal counsel to the Forum authorizes different conduct.

### *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 members' conduct. The Forum is headquartered in the United States and has conducted meetings and operations in the United States and Canada. The most important laws applicable to the Forum are the U.S. Sherman Act and the comparable Canada statute. 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.

These categories are illustrative. Any concerted activity that tends to exclude competitors or reduce competition may create concern under the antitrust laws.

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.

### ***Guidelines***

The Forum and its TL 9000 requirements are designed to facilitate competition in the supply of telecommunications products and services. By recommending a uniform set of QMS requirements, the Forum endeavors to reduce the costs that carriers and suppliers incur to demonstrate and require that a supplier's QMS practices are acceptable to its 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.

- 1. Forum membership does not obligate a member to use or to require use of any TL 9000 requirement.** While the Forum's objective of the Forum is to adopt QMS requirements that are likely to win widespread approval, the decision whether to use or require use of any TL 9000 requirement occurs in the supply relationship between individual telecommunications industry participants. Thus, a carrier may determine whether to mandate compliance with all or part of the TL 9000 requirements in its procurement contracts with suppliers, and a supplier in turn may determine 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 of its supply relationships.
- 2. Forum membership should be open to telecommunications carriers and suppliers on reasonable terms.** The criteria for and obligations of membership are stated in the Forum's Bylaws. The obligations include the requirement to have one or more individual employees of the member engaged actively in the work of one or more Working Committees or Subcommittees and/or payment of fees designed to cover the Forum's operating expenses.
- 3. The process by which TL 9000 requirements are adopted, modified or terminated should be open and fair.** The smaller Working Committees and Subcommittees develop and study proposals for adopting, modifying or terminating a particular TL 9000 requirement, 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 written 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. The proposal should be decided with each member having one vote, so that a company's vote does not depend on the number of its individual representatives attending a meeting, or its dollar revenues or other indicia of size.

4. **Discussion in Forum meetings and communications of particular prices, sales to particular customers 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 exchanges of information about current prices (including discounts and credit terms), decisions whether or not to market to particular customers, and confidential strategies for introduction of new products or entry into new markets.
5. **Benchmarking of cost data by the Forum should be conducted with appropriate safeguards.** On occasion, the Forum may desire to conduct benchmarking of cost data and other economic information of members. Benchmarking can be pro-competitive by giving participants information that leads to reduced costs and improved quality. However, if improperly done, the exchange of cost data can lead to assertions that the participants are signaling pricing plans and seeking agreement on price levels. Accordingly, when the Forum conducts benchmarking, it should do so through an independent party rather than Forum members; legal counsel should be consulted; and enough Forum members should agree to participate to assure the anonymity of the information in the benchmarking report. The benchmarking party should collect the data from participants through a written or electronic survey to create a record of what was 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 (e.g., entire years) rather than simply a snapshot of current cost data.
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 particular TL 9000 provisions. Membership similarly does not preclude a member from engaging in efforts with other firms or trade associations to develop QMS requirements.
7. **The adopted TL 9000 requirements should be made available to industry participants and others interested in quality requirements on reasonable terms.** Once TL 9000 requirements are adopted, they and the Forum's related publications and services related to them 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).
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 TL 9000 requirements for consideration of individual members to adopt, the Forum by 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 this letter or the Antitrust Guidelines should not be endorsed by the Forum, included in Forum materials, or linked from the Forum website.

*These Antitrust Guidelines were approved by the Forum Executive Board on \_\_\_\_\_, 1999 [and by the Forum membership on \_\_\_\_\_, 1999..*

## ***Attachment A***

### ***The Forum's Structure and Activities***

The Quality Excellence for Suppliers of Telecommunications Forum (the "Forum") is a California nonprofit corporation. Membership is open to any company worldwide that is either a telecommunications services provider or a supplier of telecommunications hardware or software. The Forum is governed by an Executive Board of individual representatives from service provider and supplier members, elected by the general membership. The general membership designates Working Committees and Subcommittees to conduct business on particular matters, and the Working Committee or Subcommittee membership selects the chairs and other officers of these groups.

The Forum is a trade association whose primary purpose is to reduce costs and enhance efficiency in the telecommunications industry by establishing a set of requirements, called "TL 9000," which industry participants can elect to adopt to measure the quality management system ("QMS") practices and achievements of themselves and their suppliers.

Prior to the Forum's TL 9000 project, there was no consistent set of QMS requirements specific to telecommunications supply. A supplier might institute and measure its own QMS in one way, while each of its customers and sub-suppliers mandated different requirements that entailed duplicative practices, certifications or measurements. It is estimated that the telecommunications industry loses \$10 to \$15 billion annually from losses in administrative efficiency and product quality associated with the industry's disparate, conflicting and overlapping QMS requirements.

TL 9000 is a set of uniform and consistent rules, guidelines, definitions and characteristics that can be applied to the systems that telecommunications industry participants use to monitor and manage the quality of products and services. An organization complying with TL 9000 will have policies, manuals and other communications stating its quality control objectives; methods for monitoring conformance to the policies in production of its products and services; standardized procedures for monitoring differences between the advertised or contracted specifications for products and services and the actual specifications; and standardized procedures for tracking and improving the quality of products and services from all stages from design through procurement, production, delivery, installation to post-sale support. The TL 9000 materials also define a series of metrics, for which organizations can maintain data for calculating quality specifications that individual supply contracts may require. TL 9000 does not include actual quality specifications (such as a maximum of  $x$  defects per thousand units or errors per million operations); these are instead left for the parties in a particular supply relationship to determine.

If a supplier and its customers specify that the supplier be TL 9000 compliant, the supplier need only satisfy one set of requirements and maintain QMS data in a common format, thereby reducing the duplicative costs associated with multiple QMS requirements. The TL 9000 requirements are built on the generic ISO 9000 QMS requirements, so that organizations that are TL 9000 compliant will not have to modify their practices to maintain their ISO 9000 qualification. The International Organization on Standardization ("ISO") has certified the Forum as the ISO Technical Committee liaison responsible for developing telecommunications-specific QMS requirements.

To facilitate widespread consideration and adoption of TL 9000, the Forum will make the requirements publicly available by selling handbooks and conducting training seminars. The Forum will contract with the Registrar Accreditation Board ("RAB") to accredit numerous third-party registrars. The Forum will provide training to such registrars, and registrars accredited by RAB in turn will be responsible for certifying as TL 9000 compliant those telecommunications suppliers which elect to adopt the TL 9000 requirements.

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