

# *SIMalliance Competition Law Compliance Programme*

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

The policies established in this competition law compliance programme should be interpreted in light of the basic goals of the SIMalliance, namely to promote interoperability and the rapid development of widely available specifications that will foster openness and competition in the SIM-card market to the benefit of consumers.

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

- further consumers' interest in the rapid development of accessible and widely-available specifications to fully exploit the powers of the SIM-card, SIM-card extensions and the SIM application toolkit to support value added services and technical development in relation to GSM and other mobile phones and networks.
- be transparent and permit genuine and effective participation by SIM card industry participants
- avoid any collusion among SIMalliance members (and others) that would restrict competition.

## **1. SIMalliance membership policy**

### **Accepting new members**

From time to time the board will be called upon to decide whether to admit new members to the SIMalliance. The board should do so in light of the objectives and best interests of the SIMalliance 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 SIMalliance 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 SIMalliance. 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 SIMalliance 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 SIMalliance 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 SIMalliance. Categories should not be created or maintained that arbitrarily discriminate among different companies active in the SIM-card and SIM-card-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-cards and related products and services.

## 2. Board membership

Before calling any annual meeting of SIMalliance 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 SIMalliance;

- 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 SIMalliance 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 SIMalliance. 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.

### 3. 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.

#### Strategic Partners participation in working groups

From time to time, Strategic Partners (as defined in board resolution(s)) may seek to participate in the work of a working group. In considering such requests, the head of working group should consider whether the Strategic Partner 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 Strategic Partner, the head of working group generally should permit such participation. In particular, the head of working group should seek to include any Strategic Partner in the work of a group if excluding the Partner would result in competitive disadvantage to that Strategic Partner.

In the event of any dispute involving a refusal by a head of working group to allow participation by a Strategic Partner, 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 SIMalliance 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 SIMalliance to foster openness and competition in the SIM-card market to the benefit of consumers.

The board should ensure that the Specifications developed by SIMalliance are available to anyone who wishes to have them, and that the fees charged by SIMalliance 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 SIMalliance Specifications, the board shall ensure that any SIMalliance Document (as defined in Clause 2.2 of the SIMalliance 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.

### **General rules on operation of the SIMalliance**

To avoid even the appearance of improper action, Members must in all communications with other Members, Strategic Partners 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 SIMalliance 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, Strategic Partners or other competitors.

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

If a Member or Strategic Partner 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 SIMalliance 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.