

# **IEEE, Antitrust, and Indemnification**

**IEEE LMSC July Plenary  
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# Agenda

- **Brief review of antitrust principles for standards development**
- **Individual liability**
- **Indemnification**

# Antitrust Principles

- Unlawful to make any agreement that unreasonably restrains trade
- Unlawful to make agreements to monopolize
- Antitrust laws provide for **individual** as well as corporate liability

# Restraint of Trade

- **Price-Fixing: agreements between competitors on their respective selling prices**
- **Market Allocation: agreements between competitors dividing markets (by customer or geography)**
- **Product Restraint: agreements between competitors to refrain from development or manufacture of products or to avoid innovation**

# Common Theme

- **Condemns: agreements between competitors that result in higher prices or lower quality for consumers**
- **Accepts: other kinds of agreements**
  - **But can require factual determination of whether, on balance, agreement helps or hurts consumers**

# ***Hydrolevel* – SDO Liability**

- **U.S. Supreme Court found antitrust liability for standards organization that permitted itself to be abused by one of its members**
- **Member worked with committee chair to prepare letter condemning competitor's product; SDO employee signed without necessary diligence**

# ***Allied Tube – Member Liability***

- **members of SDOs “often have economic incentives to restrain competition”**
- **“the product standards set by such associations have a serious potential for anticompetitive harm”**

# *Allied Tube*

- “[T]he steel group voters were instructed where to sit and how and when to vote by group leaders who used walkie-talkies and hand signals to facilitate communication.”
- “Few of the steel group voters had any of the technical documentation necessary to follow the meeting.”
- “None of them spoke at the meeting to give their reasons for opposing the proposal to approve polyvinyl chloride conduit.”

# **U.S. Justice Department – Robotic Welding**

**“[W]e look to see whether the process of standard-setting has been abused to seek an unfair competitive advantage and whether the proposed standard is the product of any anticompetitive conduct on the part of the organization or its members.”**

# Standards Development Organization Act of 2004

- **Applies to organizations that use “procedures that incorporate the attributes of openness, balance of interests, due process, an appeals process, and consensus”**
- **Protects IEEE and its employees but not employees/agents of companies “likely to benefit directly from the operation of the standards development activity”**

# Federal Volunteer Protection Act

- **Protects volunteers in SDO if volunteer acted in scope of responsibilities in the nonprofit**
- **Not available for willful, reckless, or criminal misconduct, gross negligence, or a conscious, flagrant indifference to the rights or safety of others**

# IEEE Indemnification Policy

- **IEEE can indemnify participants *only* “to the extent permitted by law”**
- **IEEE will indemnify *if Board finds* that participant’s activities “have been duly authorized”**
- **IEEE does *not indemnify if* Board finds that participant’s activities “have been taken in bad faith or in a manner inconsistent with the purposes or objectives of IEEE”**

# Some Conclusions

- **IEEE is working hard to protect itself and its members**
- **But your actions (or inactions) can deprive both you and IEEE of protection**

# So Here's What IEEE Is Thinking

- **Grievance Panel to consider claims of anticompetitive behavior**
- **Mandatory disclosures to get voting rights – who's paying for your time or expenses**
- **Procedures for confirmed violations – even pulling the PAR, if appropriate**

# Want to hear more?

- **Q&A Panel Session**
  - **Paul Nikolich, Chair LMSC**
  - **Steve Mills, Chair SASB**
  - **Michael Lindsay, IEEE-SA Legal Counsel**
  - **Karen Kenney, Associate Managing Director**
- **Tuesday, 19 July 2005, 5-6pm**