



# GENERAL COMPLIANCE AND ANTITRUST POLICY of OpenRail AISBL

Effective as of February 1<sup>st</sup>, 2024

**Approved by the Board of Directors on January 29<sup>th</sup>, 2024**

The OpenRail association – international association of Belgian law (Aisbl) - provides vendor-neutral, open development of open-source technologies, specifications, platforms, runtimes, frameworks, tools and derived works, generally referred to as the “OpenRail Technology”. The purpose of OpenRail is to advance the creation, evolution, promotion and support of the OpenRail Technology, as well as to cultivate both an open-source community and an ecosystem of complementary products, capabilities, and services for the use of all the transport modes involved in the mobility chain with railways as a backbone.

It is the express policy of the OpenRail association to require that all its members, activities, projects, committees, and/or working group(s) organised under its auspices, be conducted strictly in accordance with the applicable antitrust laws (the "Antitrust laws").

This policy has been prepared to inform members of the OpenRail Aisbl of this obligation.

Antitrust law violations can be punished by heavy fines against both companies and individuals and, in certain jurisdictions, also by imprisonment. In addition, antitrust violations entail the further risk of being followed by civil claims for damages by affected third parties as well as reputational damage for the members, the OpenRail association and the associated technology.

## I. OVERVIEW OF ANTICOMPETITIVE CONDUCT

Antitrust laws generally prohibit agreements between, undertakings, decisions by associations of undertakings and concerted practices that have as their object or effect the prevention, restriction or distortion of competition and in particular the following:

### 1. Price-fixing

Agreements to fix prices are generally unlawful and governmental competition authorities strictly enforce rules against price-fixing. Competitors may in particular be found to have engaged in price-fixing if they:

- agree on the range of prices within which purchases or sales may be made or that prices are to fall within any sort of formula;
- agree to fix or stop giving discounts; or
- agree to artificially increase or limit supply.

Formal written agreements are not required for an antitrust violation to exist. Informal, even tacit, agreements may violate the antitrust laws.

Illegal price fixing may occur even when undertaken by non-competitors when there is an agreement to fix the price at which a purchaser will resell a product.

Members should always keep in mind that the mission of the OpenRail association is to promote the development of the OpenRail technology. Accordingly, OpenRail activities should not involve any individual member's activities in pricing or marketing particular products. To avoid the risk of liability, OpenRail members should never discuss prices, pricing systems, or discounts relating to the OpenRail association or in conjunction with the OpenRail association's activities, nor should the OpenRail association ever be involved in members' pricing or marketing practices.

## 2. Agreements to allocate markets

The antitrust laws expressly prohibit any understanding or agreement between competitors or members of an association involving division or allocation of geographic markets or customers, or an agreement to divide sales by product type. Even an informal agreement whereby one member agrees to stay out of another's territory or product markets may constitute a violation of the antitrust laws and must be avoided.

## 3. Concerted refusals to deal

Members should avoid participating in "concerted refusals to deal" relating to the OpenRail association or in conjunction with OpenRail association's activities, more commonly known as "boycotts". Members should be careful not to make agreements that in effect result in the exclusion of a competitor from a market or a competitive activity. To avoid this risk, members should avoid any discussion or conduct that involves the refusal to deal with a particular third party.

## 4. Exchange of competitively sensitive information

The exchange of competitively sensitive information can under certain circumstances constitute a breach of antitrust laws. The extent to which information exchanges are lawful or unlawful is case-specific. Generally, any exchange of non-public, competitively sensitive information should be reviewed and approved by legal counsel in advance of the exchange.

## II. PROMOTION OF COMPETITION

Nothing contained in this policy should be construed to prohibit or limit a member from making, using, selling, marketing, or promoting products that do not embody or make use of the OpenRail Technology.

Members are free to design, develop, manufacture, acquire or market their respective products in any lawful way.

Members are not required to exclusively use, announce, or promote OpenRail tools or specifications.

### III. GENERAL OPERATING PROCEDURES

In order to ensure that OpenRail activities are conducted fairly in a manner that does not unduly benefit some competitors to the detriment of others, it is important that proceedings of the organization described in the *OpenRail Internal Regulations* be conducted openly and with the opportunity for participation from all interested parties.

To that end, the policies of the OpenRail association conform to the following main principles:

1. **Membership.** Any organization or entity that satisfies membership criteria and agrees to abide by the rules and agreements of the OpenRail association may join the OpenRail Aisbl. Members are not precluded from joining any similar organizations.
2. **Meetings.** All meetings shall be preceded by notice to members, as set forth in the Statutes.
3. **Agenda.** All meetings will follow a prepared agenda to be distributed prior to the meeting and follow any procedures set forth in the Statutes. Potential antitrust questions posed by the agenda should be raised in advance.
4. **Minutes.** Accurate minutes shall be kept of all General Assembly and Board of Directors meetings. Technical Committee and other committees/working bodies of the association should keep a written trace of their meetings, with at least the exhaustive list of decisions made during the meeting, in compliance with the OpenRail Internal Regulations. Once approved, minutes shall be distributed to all members within the 30 days following the meeting. It is important that any deficiencies in minutes promptly be brought to the attention of the OpenRail secretary.
5. **Informal gatherings.** Antitrust law violations may also occur during informal gatherings if members engage in any of the anticompetitive practices described under Sections I (here above) and IV (here after). The present antitrust compliance policy applies to any of the association's activities, whether "official" or "informal" gatherings.
6. **Distribution of General Compliance and Antitrust Policy.** It is the policy of the OpenRail association that a copy of this General Compliance and Antitrust Policy be distributed and its contents acknowledged by all members while their accession to membership. This General Compliance and Antitrust Policy will furthermore be publicly available for consultation at any time by the members and the non-members.

### IV. PROHIBITED MEMBER CONDUCT

OpenRail is committed to taking all reasonable measures to ensure compliance with competition law at all OpenRail events, meetings and activities.

Members SHALL NOT discuss or exchange information relating to the OpenRail association or in conjunction with OpenRail activities regarding:

- Any of the member’s current or projected prices, price changes, price differentials, markups, discounts, allowances, terms and conditions or sale, including credit terms, etc., or data that bear on prices, including profits, margins or cost for any product or service.
- Individual company plans to license intellectual property to or from third parties.
- Individual company’s conditions included in contracts with third parties.
- Agreements on or allocation of customers, production volumes, geographic or product markets.
- Individual company costs of procurement, development, or manufacture of any product.
- Individual company information on research and development projects except for technical information made, or intended to be made, freely available worldwide under an open-source license.
- Individual company market shares for any product or service or for all products and services.
- Express or tacit agreements on individual or concerted refusals to deal against determined companies.

## V. PERMITTED MEMBER CONDUCT

In addition to other legally permissible activities, members MAY engage in the following conduct:

- Members may individually design, develop, manufacture, acquire or market their own competitive specifications, products and services.
- Members may join or participate in any other associations, including competitive open-source organizations.
- Members may individually decide whether or not to utilise OpenRail developments in their business operations and to what extent.
- Members should adhere to prepared agendas for all OpenRail meetings and make sure that discussions follow the prepared agenda.
- If any suspicions arise of antitrust relevant matters being brought up during meetings, Members should protest and, if the criticised behaviour persists, leave the OpenRail meeting. The dissent of the Member(s) shall be reflected in the minutes of the meeting.
- Members should insist that meeting minutes be prepared and distributed to all participants, and object whenever meeting minutes do not accurately reflect the matters that transpired.
- Members should report any violations of this Policy concerning OpenRail activities to the Board of Directors.

With respect to this General Compliance and Antitrust Policy, Members assume responsibility to provide appropriate legal counsel to their representatives regarding compliance with this policy. Members shall

ensure that their representatives are informed and trained in antitrust compliant behaviour towards competitors.

## VI. TRADEMARK

The OpenRail trademark is a registered trademark. The OpenRail trademark and the OpenRail logo(s), as well as any other graphical representation visually identifying the association, belong to the association.

Any use of the OpenRail trademark with the aim of entering in any association, affiliation, approval, endorsement, mentoring, patronage and/or sponsoring of any initiative or action shall be subject to the prior written consent of the OpenRail AISBL.

A written authorisation shall be needed for the use of the trademark in following situations:

- Commercial use, including merchandising initiatives and/or actions;
- For or in relation with a software product built on or using parts of outputs of the association and/or its projects;
- Use of the logo for a restricted use;
- For any use which could be done to draw attention on an existing product or trademark, or a product/trademark or commercial concept to be launched.

The persons entitled to represent the association and make use of the OpenRail trademark in relationships with third parties are identified in a specific list to be submitted to the approval of the Board of Directors.

## VII. POLICY VIOLATION, SANCTIONS

If a member or their representative violates this policy, the Board of Directors of the OpenRail association is entitled, as provided by the OpenRail Association Statutes, to decide upon the termination of membership.

## VIII. REVISIONS, NOTICES

The Board of Directors of the OpenRail association is empowered to approve changes to this General Compliance and Antitrust Policy. After any such Board approval, a minimum of 30 (thirty) days' notice shall be provided to Members and Committers of the new version of this version of the General Compliance and Antitrust Policy before it becomes effective.

Any question regarding these matters shall be addressed to the OpenRail association at [contact@openrailassociation.org](mailto:contact@openrailassociation.org).