It's well recognized by courts and regulators in many countries that standard setting among competitors can be procompetitive and good for consumers. As noted by the 5th Circuit Court in 1988, "it has long been recognized that the establishment and monitoring of trade standards is a legitimate and beneficial function of trade associations... [and] a trade association is not by its nature a "walking conspiracy", its every denial of some benefit amounting to an unreasonable restraint of trade."

But regulatory sands can shift, and especially at a time when broad and dramatic changes (political and otherwise) seem to be the rule rather than the exception, it makes sense for collaborative organizations to keep vigilant, and to review their policies and procedures on a regular basis to help ensure antitrust compliance.

In my recent blog regarding Antitrust Laws and Open Collaboration, I briefly mentioned recent U.S. Department of Justice (DOJ) investigations into standards organizations. There were two, in particular, both focusing on internal policies and the importance of avoiding rules that might potentially disadvantage consumers or competitors. In this blog entry, we'll take a deeper look at the specific types of conduct that concerned the regulators, and how the standards organizations under examination were eventually able to address those concerns.

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