

SB 1793

Annex B to the Rules and
Procedures of the DVB Project

Antitrust Guidelines of the DVB Project

A. General

The DVB Project is a non-profit entity formed under Swiss law. It follows the competition rules in effect in Switzerland and in the European Union and as generally applied elsewhere in the developed world. It expects its members to follow these rules as well. For general information on competition rules governing standards development, DVB members should consult with their legal counsel. DVB's Project Office can provide further information, eltzroth@dvb.org.

B. Conduct during DVB meetings

During DVB meetings, chairmen should be vigilant that participants adhere to these guidelines.

1. Certain activities are prohibited: the discussion, communication or other exchange of information, or explicit or implicit agreement, during DVB meetings in respect of pricing strategies or product pricing; terms and conditions of sale including discounts and allowances, credit terms, etc.; production levels or capacity; limitation of technical development or investment; allocation of sales territories, markets or customers; market shares, submitted bids or intentions to bid; preventing anybody from gaining access to any market or customer for goods and services; and refusals to deal or do business with competitors, vendors or suppliers.

Note the following qualifications to this prohibition:

- a. The prohibition applies to DVB meetings and activities; these guidelines do not cover discussion, communication or other exchange of information outside of DVB meetings or activities. In these exchanges, DVB members should in any event comply with competition rules.
- b. If a member of a DVB subgroup wishes to make a communication that, in the opinion of its chairman may be prohibited by the first paragraph of this section B.1, the chairman will indicate that the communication is not permitted and refuse to allow discussion on its substance. (The chairman may have formed his opinion

by himself or as a result of comments from other members of subgroup.) The member whose communication was not permitted, or any other member, may submit the communication to the IPR Module. If the member is not able to attend a meeting of the IPR Module he may (i) ask that his communication be recorded in the report of the meeting of the subgroup; that part of the report shall be delivered to the Chairman IPRM; and (ii) communicate directly with the Chairman IPRM.

2. Only the Steering Board and the IPR Module, when acting in fulfilment of the IPR policy of the DVB Project, and notably to foster the formation of patent pools consistent with article 14.9 MoU, may discuss patents and other intellectual property rights associated with specification activity and the licensing and availability of such rights and, within the constraints of competition law, the matters listed in the first paragraph of section B.1. The Steering Board may designate other subgroups expressly to engage in such discussions.

3. Matters raised in DVB subgroups requiring general discussion of specific IPR licensing terms should promptly be referred to the IPR Module or to the Steering Board by the relevant subgroup chairman.

C. DVB's IPR-related activities

The DVB Project and its members engage in a number of activities in order to foster the formation of voluntary licensing regimes covering patents essential to DVB specifications. Among these activities are:

solicitation of confirmation of interest, by participants in specification development, of their willingness to consider forming a licensing programme ("patent pool");

provision of means for rights holders to make confidential declarations for an initial determination of essentiality;

informational sessions with rights holders and others on DVB's IPR policy, its fostering of licensing programmes, and the steps generally taken to complete patent pools:

making available specialists to consider declarations of essentiality in the light of their technical expertise ("peer review");

forum for exchange of views between companies (but not joint negotiations) on the terms offered by a licensing programme or rights holder;

in respect of selected specifications presenting particular competition issues, assistance in structuring, preparation of documents, participation in aspects of licensing and compliance regime;

and related assistance, communication and administrative activities. The Steering Board may by decision adopt further processes in the fulfillment of the IPR policy of the DVB Project or to promote, through disclosure or licensing practices, the implementation of DVB specifications.

Other factors relevant to antitrust considerations, including openness of DVB's membership, balancing of interests, the transparency of the process for adopting DVB specifications, access to DVB specifications, and the availability of an appeals process, are set out in the DVB's Memorandum of Understanding, its Rules and Procedures or in documents therein referred to.