**EU COMPETITION LAW   
COMPLIANCE POLICY**

**1. INTRODUCTORY STATEMENT**

The European Confederation of Pharmaceutical Entrepreneurs (“EUCOPE”) brings together representatives from small and medium-sized innovative companies to discuss common issues, challenges and trends affecting the pharmaceutical industry. This activity can be perfectly legitimate. However, certain competition law risks may arise in relation to EUCOPE’s activities.

This European Union (“EU”) compliance policy (“Policy”) explains these competition law risks and aims to ensure compliance by all members and EUCOPE staff with the rules applicable in the EU. EUCOPE itself and its members are subject to these rules when engaging in any EUCOPE related activities. Any anticompetitive behavior adopted by a member can result in serious financial, criminal and/or disciplinary penalties, as well as other harm (e.g., reputational harm) for EUCOPE, represented companies and for meeting participants personally.

This Policy should allow you to:

* be familiar with the fundamental principles of EU competition law set out below;
* identify situations where competition law issues may arise; and
* appreciate the consequences of non-compliance with competition law for yourself, your company and EUCOPE as an association.

**2. GENERAL EU COMPETITION LAW PRINCIPLES**

EU competition rules are set out in the Treaty on the Functioning of the European Union (“TFEU”), as well as in national laws (that largely mirror the EU rules). These rules are directly applicable in all EU Member States and are enforced by the European Commission and national competition authorities in parallel.

The purpose of EU competition law is to promote free and fair competition across the EU for the benefit of consumers and the economy, and to ensure the smooth functioning of the EU’s internal market. To that end, the competition rules prohibit two main types of activity:

* **Anti-competitive contacts or agreements:** any form of relationship or understanding between competing companies that could distort the competitive process. This includes any agreement between rivals to limit the competition between them, e.g., agreements to fix prices, rig bids, allocate markets or customers, jointly boycott customers or suppliers, agreements on capacity, or generally reaching a common understanding in relation to any of the ways in which they might compete. Note that a violation can occur even without any intention to limit competition. In this sense, the law looks at the actual and potential impact of conduct as well as intent and purpose.
* **Abuse of market power:** competition rules also prohibit certain market exploitation practices by companies that have significant market power.

Dealing with competitors generally implies a degree of risk. The type of conduct that is most likely to create such a risk for EUCOPE and its members, and that therefore requires particular caution, is the exchange of commercially sensitive information. The exchange of certain kinds of information between competitors can lead to a competition law violation if it allows companies to become aware of the market strategies of their competitors.

It is generally acceptable to talk amongst competitors about issues that are already public and well known, that are not business sensitive or current, or relate to the industry very broadly. However, sharing information that could have a strategic purpose and relevance to current or future market behavior is likely to cause a competition law violation. This includes information on: current or future prices; on how prices are calculated or how pricing strategies are determined; current or projected costs; discount levels; capacity or capacity utilization; information on customers; upcoming opportunities or business plans; current or upcoming R&D; upcoming or current bids; suppliers (including prices paid to suppliers); and any other non-public information that a competitor could use to their advantage.

Care must therefore be taken with the information exchanged during EUCOPE meetings (general or working group meetings), and more generally discussions between members, so that no such sensitive information is revealed.

**3. DO’S AND DON’T’S IN PRACTICE**

It is **perfectly legitimate** for representatives of a pharmaceutical company to participate in EUCOPE and interact with competitors in that context. It is also legitimate for EUCOPE members to discuss common issues, challenges, or trends in the pharmaceutical industry, engage in lobbying efforts or take lobbying/public relations initiatives to represent the industry’s views (e.g., before the EU institutions), and discuss industry standards. However, there are a number of practical guidelines that should be respected.

**A. Guidelines for EUCOPE meetings**

As any meetings of competitors carry risks and can be open to later misunderstandings or misinterpretations, when participating in a EUCOPE meeting, **you should**:

* Make sure that each meeting has a legitimate business purpose;
* A written agenda should be circulated in advance, as well as minutes after the meeting. If the agenda appears to raise any concerns, please discuss it with EUCOPE’s General Counsel (*see* contact details below) before attending;
* If any sensitive information is discussed or disseminated, insist that the discussion be terminated immediately and make sure that your objection is recorded in the minutes. If necessary, leave the meeting and immediately inform EUCOPE’s General Counsel.

It is important to note that when conducting an investigation, the European Commission and national competition authorities heavily rely on internal documents, and on internal and external electronic communications. You should therefore be careful when drafting any documents (including meeting reports, minutes, notes, etc.). It is essential to avoid creating documents or records that could be open to misinterpretation, either through the language used or their context.

There are certain matters which **should not** be discussed with competitors before, during or after any such meetings. These include:

* Territorial restrictions, allocation of customers, restrictions on types of services, or any other kind of market division;
* Prices, price changes, conditions of sale (including payment terms and guarantees), price differentials, discounts;
* Current market conditions and issues, including industry pricing policies or patterns, price levels; capacity (including planned or anticipated changes regarding those matters), except where limited to the discussion of historical or public information;
* Individual costs, cost accounting formulas, methods of calculating costs;
* Individual company figures on market shares, sources of supply, capacity;
* Information as to future plans of individual companies concerning technology, capacity, marketing or sales; and
* Matters relating to individual suppliers or customers.

**Attention**: these rules equally apply to informal discussions before, after, or during each meeting.

**B. Creation of industry statistics and benchmarking**

Industry associations can, moreover, decide to gather certain types of non-current information for market tracking or benchmarking purposes, and present this in a fashion that cannot be disaggregated (i.e. permitting individual companies’ data to be deciphered).

In that case, the following guidelines should be respected:

* The data should be collected and disseminated by EUCOPE staff that are not connected with any of the members;
* Any data disseminated must be aggregated data which does not allow the identification of any individual participant. It must not be possible to trace back which company submitted what data;
* Any data submitted by an individual member must not be disclosed to the other participants.

Any data submitted in this context, should be historic information only (generally data over 1 year old should be acceptable, though this may change based on the context).

**4. REPORTING POTENTIAL VIOLATIONS**

Any suspected competition law violations must be reported immediately to EUCOPE’s General Counsel. Similarly, if you have any doubts as to whether or not certain conduct may infringe EU competition law rules, immediately contact EUCOPE’s General Counsel. Also, if you know or learn of a potential violation of EU competition rules or of this Policy by any other EUCOPE member, you must promptly report the facts to the General Counsel. Reporting in good faith means sharing full and accurate information about a situation believed to be true.

Contact Details:

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