

## GUIDANCE ON COMPETITION LAW COMPLIANCE

This document sets out guidance for Bonsucro and its Members in respect of their attendance and conduct at Bonsucro Member meetings. This guidance also applies to informal discussions between Members before and after meetings.

This Guidance is not an exhaustive statement of the law. More detailed guidance on the compliance with EU Competition Law is set out in Bonsucro's Code of Conduct, with which all Members must comply. In addition, Members should be aware that *other* national competition rules may apply in countries both inside and outside of the EU. Members must ensure that they are aware of, and comply with all applicable competition laws and Bonsucro strongly advises that its Members seek their own competition law advice and training.

As Bonsucro provides a forum for Members who may be competitors to meet and discuss commercial issues concerning the sugar cane production and supply market, particular care needs to be taken to avoid the risk of Members breaching competition law by concluding anti-competitive agreements or exchanging commercially sensitive information. This guidance seeks to set out examples of typical types of behaviour that are likely or unlikely to infringe competition law in the context of sugar cane production and supply industry.

### When is an exchange of information problematic?

- An exchange takes place **between actual and potential competitors**
- **An exchange of information can arise in any format** e.g. formal, informal, written, oral, via SMS, twitter
- **An exchange of commercially sensitive information** (see table below for more details)
- The exchange allows your competitors to **predict your future commercial actions**
- **An exchange can be unilateral** - it is sufficient that the recipient of information can be influenced by the information received.
- **An exchange can take place via a third party**, e.g. a trade union.

The following table sets out the types of commercially sensitive information that will be likely/unlikely to infringe competition law, if exchanged.

Information Exchanges that are <b>likely</b> to infringe competition law	Information Exchanges that are <b>unlikely</b> to infringe competition law
X Information on prices or costs - including any element of price information, e.g. discounts, price increases, payment terms, profit margins, rebates, margins.	✓ Sharing of such technical information that is strictly necessary for the purposes of standardisation or for developing best practices.
X Information on quantities - e.g. quantities produced or sold, production capacity, market shares, customers, territories.	✓ Openly discussing health and safety issues or proposed changes in the law relevant to the sugar cane industry, provided that the details do not relate to any individual strategy.
X Individualised data - i.e data that identifies a specific competitor or a specific transaction.	✓ General industry trends or aggregated historic data - Sufficient players' data needs to be aggregated by an independent third party (e.g. Bonsucro) so that it cannot be

<p>X Information on any existing, recent or future commercial relationships and agreements, e.g. planned investments, market shares or incentive programs.</p>	<p>reverse engineered.</p> <p>✓ Independently collated data - e.g. collation of statistical information/market data which provides an industry wide general overview of the sugarcane sector or market trends, without it being possible to identify the prices or volumes of an individual competitors.</p>
<p>X Current or recent data which could offer insight into marketing strategy, e.g. market shares, market strategy or new product launches .</p>	<p>✓ Historic data - As a general rule the data should be older than the average length of contracts in the sugarcane industry. Generally data older than 1 year may be considered historic.</p>
<p>X Any other confidential or commercially sensitive information that a company would not normally publish because it would give its competitors insight into its market strategy.</p>	<p>✓ Genuinely accessible public information - i.e. information that is in the public domain.</p>

### Guidance on conduct at bonsucro members meetings

Members should take caution with and avoid openly discussing any price or quantity related confidential information in relation to the procurement of sugarcane. For example:

X avoid discussing future intentions on any pricing matters, e.g. whether you would pay a premium for certified sugarcane products and at what price, or, the level at which you would be prepared to pay for Bonsucro credits,

X avoid discussing future intentions on any production or supply quantities,

Conversely, Members may openly discuss the following:

✓ the sharing of technical information for purposes of creating Bonsucro technical standards which can assist in the development of next generation products;

✓ sharing of best practices information in order to assist Members with improving their internal efficiency through benchmarking against each other's best practices, provided that Members remain free to conduct themselves in a manner which does not conform with the relevant best practices;

✓ sharing of information on health and safety issues or proposed changes in the law relevant to the sugarcane production and supply industry, provided such information is not a company's individual strategy;

✓ sharing of non-price or quantity information in relation to sustainability issues (e.g. Land rights, water usage) provided that all such information is aggregated and anonymized before it is shared with the Members; and

✓ committing to making joint statements about their agreement to support Bonsucro as an organisation, backing the Bonsucro standard as a credible standard relating to sugarcane.

### Action to take if you become aware of potentially illegal conduct

! Make a clear statement that you and your company do not wish to partake in such an agreement/receive such information.

! Stop the discussion of the relevant issue and minute that the discussion did not proceed.

! Report the incident to your legal counsel immediately.