

## COMPETITION AND ANTI-TRUST COMPLIANCE POLICY

### 1. INTRODUCTION

- 1.1 Bonsucro's "**Members**" must comply with the competition and anti-trust laws of the European Union ("**EU**") and other local, federal or national jurisdictions in which they operate.
- 1.2 Note that competition law is typically broad in its effect. For example, for the EU, it applies not only to companies located within the European Economic Area ("**EEA**") but also to companies outside the EEA whose conduct may have an effect in the EEA.
- 1.3 Although there are individual consequences for Members that breach competition law, Bonsucro may be implicated in a breach of competition law by its Members and may be subject to penalties as a result. This is also likely to damage Bonsucro's reputation.
- 1.4 This policy sets out procedures and guidelines which must be followed by Members. It is intended to give examples of activities which commonly give rise to competition law compliance issues. This policy also provides an overview of the main rules of EU competition law.
- 1.5 A breach or suspected breach of any applicable competition or anti-trust law or this policy by a Member may lead to their expulsion from Bonsucro.
- 1.6 This policy is not an exhaustive statement of the law and is not a substitute for taking legal advice. Each Member is responsible for its own compliance with competition laws.

### 2. ASSOCIATIONS

- 2.1 Competition law prohibits anti-competitive behaviour by undertakings and associations of undertakings. Any body formed to represent the interest of its Members in commercial matters, such as Bonsucro, is an association of undertakings. As Bonsucro provides a forum for Members to meet and discuss issues concerning the industry in which they operate, Members should be aware of the competition law risks this creates. The fact that Members may act through or under the name of Bonsucro does not affect the way in which competition law applies.
- 2.2 Bonsucro reserves the right to expel a Member if it reasonably suspects that a Member has been involved in any of the following practices at a meeting of any or all of Bonsucro's Members:
  - 2.2.1 Discussing product prices and charges (including discounts and allowances), terms of sale, product or marketing plans and/or business relations with competitors.
  - 2.2.2 Exchanging information with competitors which reduces or removes uncertainties in competition, e.g. price information.
  - 2.2.3 Agreeing with competitors to fix the price at which the Member and competitor will acquire goods and/or services or agreeing to acquire goods and/or services only from specific suppliers.
  - 2.2.4 Agreeing with competitors to provide goods and/or services on the same terms and conditions, leaving customers with little or no choice between suppliers.

### 3. OTHER ANTI-COMPETITIVE CONDUCT

Bonsucro may also expel a Member if it is found by a court or relevant authority with jurisdiction over competition matters to have engaged in anti-competitive behaviour outside the operation of Bonsucro. The following is a non-exhaustive list of examples of anti-competitive practices that are likely to be illegal (because competition issues frequently arise in situations of this type). Even if they do not take place at a meeting of any or all of Bonsucro's members, Bonsucro's reputation may be damaged. There are other activities which may also be illegal.

### **3.1 Abuse of a dominant position**

(the following applies where a Member is dominant in a relevant market)

- 3.1.1 Refusing without any objective justification to deal with a particular customer.
- 3.1.2 Informing a customer that a Member will only supply product A if he also purchases product B from that Member.

### **3.2 Pricing**

- 3.2.1 Contacting a competitor to ask whether, if the Member were to raise its prices, the competitor would do the same.
- 3.2.2 Discussing with other pricing details with a competitor (e.g. prices of key raw materials that the Member and competitor both purchase).

### **3.3 Supply**

- 3.3.1 Discussing a supply arrangement with a competitor in order to get a feel for selling prices in the market.
- 3.3.2 Agreeing resale prices with a supplier or distributor.

### **3.4 Import and export**

- 3.4.1 Specifying one price to a distributor if he is selling the product in his own country and a higher price if he plans to export it to another EU country.
- 3.4.2 Requiring a distributor neither to resell the product for export to another EU country nor sell it himself to a customer in another EU country.

### **3.5 Technological co-operation**

- 3.5.1 Agreeing with a competitor the exact time to introduce new technology which the Member and competitor are both developing independently.

### **3.6 Information exchange**

- 3.6.1 Exchanging information on historical sales, prices, discounts, terms of business, etc. directly with a competitor. The anti-competitive effect of sharing such information will depend on the nature and currency of the information, the number of organisations operating in the market and organisations to which the information is disclosed.

### **3.7 Dealing with competitors generally**

Whenever a Member is dealing with a competitor, Members should be aware that competition risks are more likely to arise. Members should not have any discussion with a competitor concerning prices, price changes, discounts, pricing methods, costs, warranties, transportation charges, terms of sale, marketing initiatives or product plans without first seeking legal advice from their own advisers. The following conduct is likely to be illegal:

- 3.7.1 Dividing up different projects between a Member and a competitor, for example by agreeing to bid for different contracts.
- 3.7.2 Having discussions or making plans with a competitor to keep a new arrival out of the market.
- 3.7.3 Warning a competitor or new market entrant to stay out of a Member's territory.
- 3.7.4 Discussing with a competitor possible investments that the competitor is considering making in a particular country.
- 3.7.5 Agreeing to boycott particular customers or suppliers.
- 3.7.6 Otherwise making an agreement or acting with a competitor in such a way as to allocate sales, territory, customers or products between a Member and competitor.

## **4. SUMMARY OF THE MAIN EU RULES**

### **ANTI-COMPETITIVE ARRANGEMENTS**

- 4.1 Any agreement or practice between two or more businesses which has the object or effect of preventing, restricting or distorting competition within the EEA to an appreciable extent is prohibited. The effect on trade and competition can be actual or potential.
- 4.2 If, for example, a Member arranges with a competitor to fix prices, or to allocate customers or markets, the arrangement will be prohibited. However, more routine commercial agreements, such as joint ventures and distribution agreements, can also be caught.

### **ABUSE OF A DOMINANT POSITION**

- 4.3 It is illegal for companies with strong market power (i.e. a "dominant position") to exploit their position in a way which may affect trade between Member States, for example, by imposing excessively high or predatorily low prices or discriminating between customers without justification.
- 4.4 Generally speaking, a company will be in a dominant position if it can take business decisions without regard to its competitors. Assessing whether a company is in a dominant position depends on a variety of factors of which market share is only one. However, as a general guide, there is a high risk that companies with a market share of 50% or more would be regarded as dominant. If a company's market share is below 40%, it is unlikely to be dominant.

### **TERRITORIAL APPLICATION**

- 4.5 The rules can even apply to practices or transactions between companies located outside the EEA if their effect is to distort competition within the EEA.

#### **CONSEQUENCES OF BREACH**

- 4.6 Failure to comply with competition law can lead to high financial penalties. The European Commission can impose fines of up to 10% of an organisation's group worldwide turnover if it is found to have breached competition law.
- 4.7 Investigations into a company and findings of infringements attract adverse publicity, and take years to resolve, leading to high costs and taking up management time that could and should be devoted to more profitable projects.
- 4.8 An agreement which infringes competition laws may be wholly or partially invalid, which means that it cannot be enforced.
- 4.9 Third parties who suffer loss as a result of anti-competitive behaviour can recover damages from the company involved.
- 4.10 In some countries, a breach of competition law is a criminal offence and there may be the risk of fines or imprisonment for individuals.