

COMPETITION COMPLIANCE PROTOCOL ("PROTOCOL")

This Protocol forms part of and is incorporated into the terms and conditions which form the Membership Agreement between ETI (Europe) and each of its members. In so doing, this Protocol governs all conduct by each member of ETI (Europe), including all interactions by each member with each other or any third parties (including, in particular, any members or third parties who may be competitors) in connection with any of the activities, meetings and/or discussions of and/or as facilitated by ETI (Europe) ("Purpose")

1 INTRODUCTION

- 1.1 All ETI (Europe) meetings, or meetings/discussions between industry members, which, by their very nature, bring together competitors for the purposes of discussing the industry, are perfectly legitimate so long as their objective is restricted to areas of collaboration which can have no appreciable effect on the competition between their members/the participants.
- 1.2 The sharing or disclosure of Commercially Sensitive Information (as defined in section 2 below) between competitors or with third parties would raise potential issues under Article 101 of the Treaty on the Functioning of the European Union and the corresponding provisions of the national competition laws of the UK and of the various EU Member States (as well as the competition and antitrust laws in the US), which prohibits all agreements between undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect the prevention, restriction or distortion of competition.
- 1.3 It is therefore essential that all conduct, actions, decisions, discussions, negotiations and/or communications ("**Conduct**") between any member of ETI (Europe) and any of its competitors [or third parties], for the Purpose, shall not permit or facilitate (including inadvertently), directly or indirectly, any exchange of Commercially Sensitive Information.
- 1.4 This Protocol therefore sets out the ways in which each member of ETI (Europe), and any respective personnel, will ensure that any disclosure, sharing or exchange of information between itself and any of its competitors and/or any third parties is limited to the extent necessary in order to achieve the Purpose and is at all times in compliance with competition law.

2 COMPETITION COMPLIANCE

- 2.1 At all times, each member of ETI (Europe) shall ensure that negotiations and/or communications (whether formal or informal, written or verbal, and irrespective of the medium of communication) held for the Purpose are not used as a means through which Commercially Sensitive Information of any of the participants is disclosed, shared or exchanged (directly or indirectly).
- 2.2 "**Commercially Sensitive Information**"
 - (a) means information:
 - (i) to which actual or potential competitors would not have access in the normal course of business; and
 - (ii) knowledge of which could give the recipient a competitive advantage in relation to a competitor's strategy or competitive behaviour; and

- (b) includes (without limitation):
- (i) details of any participant's market positions, including details of market shares, sales, and pricing policies, views on likely developments in the market where these are based on insights from a participant's or its customers' proprietary trading strategies;
 - (ii) current or prospective pricing, including pricing policies, details of rates, margins, sales volumes, brokerage fees and terms and conditions, or current or recent information on margins and profitability of trading positions;
 - (iii) current or prospective customers (including customers' trading strategies), terms and conditions of arrangements with customers, customer information (including customer lists, details and prospects and information about customers' requests/orders and whether you intend to execute/the terms you intend to offer or have offered);
 - (iv) current or future costs;
 - (v) transactional information relating to competitive elements of trading;
 - (vi) plans to reduce or expand operations;
 - (vii) current, recent or future marketing or strategic plans;
 - (viii) trade secrets or other proprietary technology and data;
 - (ix) information about order books, including details of volume of orders, limits etc.
- 2.3 Any and all Conduct by each member of ETI (Europe), for the Purpose, shall be conducted in full compliance with competition law and with this Protocol, including the Do's and Don'ts set out in the **Annex**.
- 2.4 In particular, each member of ETI (Europe) is entitled to:
- (a) obtain an independent legal review of any proposed Conduct for the Purpose or of any written agenda of any meeting or discussion proposed to be held for the Purpose;
 - (b) seek legal advice if in any doubt whatsoever about whether any particular constitutes or does not constitute Commercially Sensitive Information and whether exchanging such information complies with the Antitrust and Competition Laws; or
 - (c) to require that independent counsel be present at any meetings/discussions as an observer to ensure compliance with the Antitrust and Competition Laws and with this Protocol.
- 2.5 Each member of ETI (Europe) and any competitors or third parties shall ensure that all their respective personnel in any way involved in Conduct held for the Purpose are fully informed of the importance of complying with this Protocol and have been provided with a copy of it.

ANNEX

Do's and Don'ts in Trade Association/Industry Meetings

This Annex sets out a number of Do's and Don'ts that must be adhered to when Conduct (whether formal or informal, written or verbal, and irrespective of the medium of communication) for the Purpose is engaged in or takes place, in order to act in compliance with competition law.

DO

- **Do** always circulate an agenda for meetings/calls and a list of all attendees in advance and ensure that you are satisfied that the agenda contains nothing objectionable on competition law grounds. Carefully review written agendas received for “red flags”.
- **Do** always use clear, accurate and unambiguous wording when creating documents to avoid any misinterpretation.
- **Do** ensure that the Chairperson at the meeting reminds the participants of their duty to comply with competition law and make sure that all participants are informed of the presence of any independent competition counsel (recommended).
- **Do** ensure that detailed minutes of meetings are taken and accurately reflect the points made in meetings.
- **Do** ensure that discussions are confined (and seen to be confined) to the agenda as well as to any matters properly necessary to discuss for the Purpose.
- **Do** check, with your in-house legal team or compliance officer or with qualified independent legal counsel, that your participation is necessary and ask your in-house legal team or compliance officer or with qualified independent legal counsel to review important documents that may have significance under competition law.
- **Do** feel free to discuss general market conditions or developments likely to impact the Purpose, but without straying into the participants’ responses to these factors as regards their respective businesses and how they operate.

DON'T

- **Do not** exchange or discuss any information which is not directly related to the Purpose.
- **Do not** discuss your company's or any of its competitors' market positions, including details of market shares, sales, and pricing policies.
- **Do not** discuss what your company or any of its competitors charges or pays for any products (including details of rates, margins, sales volumes, brokerage fees and terms and conditions).
- **Do not** exchange other types of Commercially Sensitive Information, such as:
 - current or prospective pricing;
 - current or prospective customers;
 - current or prospective suppliers;
 - current or future costs;
 - transactional information relating to competitive elements of trading;
 - plans to reduce or expand operations;

- marketing or strategic plans;
- trade secrets or other proprietary technology and data;
- other Commercially Sensitive Information as set out in Section 2 of this Protocol.

It may be possible to discuss certain aggregated statistical information where no individual company's information is identifiable (to be undertaken by an independent organisation), or historical information that no longer provides an insight into a company's current/future activities. If in any doubt about what constitutes or does not constitute Commercially Sensitive Information and whether exchanging such information complies with competition law, seek legal advice.

- **Do not** discuss or agree on joint or linked actions on issues such as (without limitation) prices or other terms and conditions of business, the allocation of markets/customers/territories, and/or excluding actual or potential competitors.

If you are present at a meeting or in a conversation at which the discussion strays into areas giving rise to competition law concerns:

- Do not participate in the discussion and interrupt to terminate it;
- Make your concerns known and register your objection immediately;
- If necessary, and in particular if the discussion continues after you raise concerns, leave the meeting and ask for your exit and subsequent absence from the meeting to be minuted;
- Report the matter to your legal department, who will advise upon any further action;
- Do not take or reciprocate in giving to other attendees any Commercially Sensitive Information.

If you are in any doubt about the legality of the matters discussed:

- ask for that agenda item or issue to be postponed until you have had an opportunity to take legal advice (either at the meeting, if a qualified lawyer is present, or from your legal department).

Just being present when illegal discussions are taking place may be sufficient to involve you and your company in an investigation or prosecution, even if you did not actively participate in the discussions.