Guidance on Competition Law Compliance

Guidelines for Meetings

Community Pharmacy England, being a representative body for pharmacists in the UK, brings together a number of parties, many of whom are competitors. This can give rise to competition law concerns should any commercially sensitive information be disclosed or discussed at any meeting. A short guide to Competition Law Risk is at: https://www.gov.uk/government/publications/competition-law-risk-a-short-guide/competition-law-risk-a-short-guide

To avoid any competition law concerns, all participants at any Community Pharmacy England meeting (whether it be a formal committee or subcommittee meeting or more informal occasion) should take care in any discussions with other participants who are or who may become competitors. The guidelines below provide a framework for such discussions and, where appropriate (for instance the use of an agenda or minutes would not be appropriate during an informal social gathering), should be adhered to at all times.

1. Objectives of the meeting

1.1 A clearly listed agenda should be prepared before the meeting identifying the topics for discussion - the agenda should be used to provide the framework for the discussion and the meeting should not stray beyond those items listed to be discussed.

1.2 Topics for discussion should be limited to the activities and responsibilities of the Community Pharmacy England, as well as general industry matters. Examples of Community Pharmacy England activities and responsibilities and general industry matters would include:

1.2.1 The detailed functions and roles of the Community Pharmacy England including (but not limited to):

(a) liaising with the Department of Health and Social Care and National Health Service bodies on behalf of chemists;

(b) the negotiation, as representative of the general body of chemists, with the Department of Health and Social Care and NHS bodies on the conditions of service and remuneration for the dispensing of prescriptions and provision of other services;

(c) agreeing with the Department of Health and Social Care the prices to be used in the prescription processing division for NHS prescriptions or other pharmaceutical services;

(d) the provision of administration, audit and advisory services relating to chemists on NHS matters.

1.2.2 Current or proposed legislation or regulation - for example:

(a) defects in existing legislation/regulation and difficulties faced by the sector in complying with such legislation/regulation;

(b) status of legislative/regulatory proposals;

(c) industry-wide responses to consultations;

(d) impact of current or proposed legislation/regulation (without disclosing any commercial information relevant to a member);

(e) Industry-wide initiatives to comply with legislation/regulation;

1.2.3 General developments or trends in the sector;

1.2.4 Collection or review of industry data (but any data that contains commercially sensitive information should be historic, generalised and made anonymous prior to being disclosed to other members);

1.2.5 Educational or training events for members;

1.2.6 Current or proposed guidelines/rules/codes prepared by the Community Pharmacy England:

(a) scope of guidelines/rules/codes;

(b) amendments to current guidelines/rules/codes;

1.2.7 Compliance with such guidelines/rules/codes.

2. Conducting the meeting

2.1 Generally, minutes should be made recording all discussions during the meeting;

2.2 If a member wishes to clarify (for competition law compliance purposes) whether he/she can or cannot discuss a particular topic, or if any member has any doubts about an issue it would like to raise for discussion, this should be raised with the Chair of the meeting outside of the meeting prior to the issued being raised.

2.3 If any of the issues listed in 3.1 below are raised, the discussion should be terminated immediately.

3. Discussions during the meeting

3.1 Where members (at the meeting) include actual or potential competitors, they should not discuss their own or their competitors' commercial strategy or any matter which would be considered commercially sensitive. Subjects to avoid are:

3.1.1 Individual commercial policies of those companies present - this includes historical, current or future policy where it is not in the public domain and participants should not question other participants about such policy;

3.1.2 Any commercial difficulties faced by the participants other than in very general terms - for example, members may express their general concern at rising costs or overheads but should not disclose the impact of those costs on their profit margins or other financial figures;

3.1.3 Any proposal discussing any coordinated commercial conduct between participants (for instance relating to pricing, distribution or arrangements with customers);

3.1.4 Any request made by one participant (or discussion) asking other members to stop any particular commercial conduct or relationships;

3.1.5 The sharing of commercially sensitive information (verbally and in writing) – including (but is not limited to);

(a) Pricing terms;

(b) Current terms and conditions of supply trade;

(c) Details of the commercial arrangements with customers or suppliers;

(d) Sales information;

3.1.6 Making any allegation as to the commercial conduct of others.

3.2 To the extent that any information is shared between participants, such information should be general, non-specific and where appropriate, should be historical and made anonymous to ensure that the information is not commercially sensitive and cannot be attributed to any participants.

4. Outcomes of the meeting

4.1 Minutes of the meeting should be prepared and circulated to attendees. Note that any decision or recommendation made at a Community Pharmacy England meeting, however informal, can be subject to competition law and could constitute a potentially anti-competitive agreement.