



Competition Law Guidance for British Healthcare Business Intelligence Association (“BHBIA”) Members

Introduction

1. The BHBIA is a membership organisation. Members are involved in the supply business intelligence services to companies involved in the provision of pharmaceuticals and/or healthcare.
2. One of the main objectives of the BHBIA is to provide members with on going learning and development that will help them perform their professional role in the work place.
3. Membership of the BHBIA necessarily includes a number of members who are at the same level of the business market, in other words they are business ‘rivals’ either actually or potentially.
4. As with any association and/or meeting of business rivals, there is a very real risk of potential infringements of competition law.
5. This guidance is in place to try and prevent behaviour that brings about such risk. [Not following this guidance may result in expulsion of the relevant member from the BHBIA.]

Brief Guide to Competition Law

6. Competition law is enshrined in both domestic and European law. Infringements that solely affect the United Kingdom may be pursued by the Office of Fair Trading (“OFT”). Infringements that have pan-European effects may be pursued by the European Commission (the “Commission”). Both the OFT and the Commission have the power to fine undertakings found to be involved in breaches of competition law up to 10% of their turnover.
7. Additionally, private persons (including companies) affected by breaches of competition law may sue the infringers for damage caused. In extreme cases, officers of companies involved in infringements can be jailed.
8. There are two main prohibitions in competition law. They are against:
 - (i) *Agreements that affect, prevent, restrict or distort competition; and,*
 - (ii) *Abuse of a dominant position.*

Agreements that affect, prevent, restrict or distort competition; and,

9. An “agreement” does not have to be in writing, it covers any understanding, oral or by conduct, to act in a particular way. The prime example of prohibited conduct is agreeing to fix prices. However, any conduct which has the effect or aim of distorting the market is prohibited.
10. For members of the BHBA, the main concern will be to ensure that they do not, either intentionally or inadvertently, enter into discussion which influences the commercial behaviour of other members.
11. Such behaviour includes the discussion of pricing and other commercial intentions.
12. What is not prohibited is an open and anonymised general discussion around market trends and forces, and, discussion about representative action in relation to government action (i.e. lobbying). So, discussion about the trends in longevity which medical statistics that are openly available are demonstrating may be legitimate. Discussing pricing or marketing strategies arising as a result may not be.

Abuse of a dominant position

13. Abuse of a dominant position is relevant where a particular party is dominant in a particular market and it abuses its position in order to consolidate or improve its commercial position illegitimately.
14. This may be a concern if a particular member of the BHBA is or becomes dominant, or, if the BHBA becomes dominant.

What are the key behaviours to (i) avoid, and, (ii) undertake?

15. The key behaviours to avoid are:

- The facilitation of meetings/events/courses without steps to prevent the illegitimate discussion of pricing or market behaviour.
- Allowing or tolerating any BHBA processes (including, but not limited to meetings/events/courses) to become a method by which members get to know sensitive business information or the commercial intent of other members.
- Avoiding arbitrary or unfair exclusion of applicants to join the BHBA.

16. The key behaviours to undertake are:

- Having a written agenda/programme for all meetings/events/courses and minutes for meetings only.
- Making this guidance clear to all members.
- Taking legal advice for activities where members or the BHBA are unsure of the legal position *and* promoting a culture of compliance.