

# BONSUCRO<sup>®</sup> CODE OF CONDUCT

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## *Preamble*

BONSUCRO is an open, voluntary, not-for-profit multi-stakeholder organisation aiming to improve the social, environmental, and economic sustainability of sugar cane production.

The Code sets out the commitments of members, which are imperative to being a member of BONSUCRO. By doing so, the Code aims to uphold the integrity, credibility and continued progress of BONSUCRO and its member organisations.

All Members undertake to act in good faith and in a transparent manner towards this objective and commit to supporting this Code of Conduct.

This Code applies to all Full and Associate Members of Bonsucro with respect to their activities in the sugarcane sector and its derivatives.

## **1. Promotion and Commitment**

1.1 Member organisations shall acknowledge and agree to implement BONSUCRO's objectives and Standards through informed and explicit endorsement.

1.2 Members shall exercise best endeavours to achieve the above throughout their own organisation and to their customers, suppliers, sub-contractors and wider value chains as appropriate. Members who are not actively involved in the production and trade of sugar cane and its by-products shall promote and communicate their commitments in ways that support the efforts of producers to increase the volume, quality and sustainability of sugar cane produced and certified to BONSUCRO Standards.

1.3 Membership of BONSUCRO shall require active participation of at least one nominated representative of the Member organisation.

## **2. Transparency**

2.1 Members shall not make any misleading or unsubstantiated claims, statements and reports about the production, procurement or use of Bonsucro certified sugar cane products

2.2 Save for appropriate protection of trade sensitive and/or confidential information and subject to any applicable Competition Rules, Members shall commit to open and transparent engagement with interested parties.

2.3 Members shall report annually to the Board of Directors on their efforts to support Bonsucro and improve the social, environmental, and economic sustainability of sugar cane production.

### 3. Implementation and Support

3.1 All Members shall commit themselves to the principle of continuous improvement of the sugar cane value chain and:

3.2 In this regard, Members shall use their best efforts to support the implementation of the BONSUCRO Standards, and the effective functioning of the certification system and support increased purchasing of BONSUCRO certified sugar cane and its derivatives.

3.3 Members who are not involved in producing and purchasing sugar cane products will actively seek to promote BONSUCRO certified sugar cane products and will give support to those members engaged in implementing the BONSUCRO Standards or buying BONSUCRO certified products.

3.4 Members will share with other members experience in the design and implementation of activities to support sustainable sugar cane production (subject to any restrictions in relation to commercially confidential information and always in accordance with the Bonsucro Competition Compliance Policy - Annex 1).

3.5 Members shall at all times adhere strictly to the Bonsucro Competition Compliance Policy (as changed from time to time, the current version of which is at Annex I). Bonsucro will notify Members in writing, of any proposed change to the Competition Compliance Policy and Members must, as a condition of their continuing membership of Bonsucro, provide their written consent to any such change. In the event that a Member has reasonable grounds to suspect or becomes aware that another Member is engaged in anti-competitive behaviour within Bonsucro or with another Member, they shall immediately notify this to the Bonsucro Board of Directors. Members should report any anti-competitive behaviour or suspicions of anti-competitive behaviour by another Member outside the operation of Bonsucro to an appropriate competition authority.

### 4. Breaches of the Code

4.1 Members are encouraged to resolve any disputes relating to the application of this Code of Conduct directly with each other. Should this prove infeasible, a written complaint should be submitted to the Secretariat in order to commence the Complaints Resolution Process.

4.2 Members hereby agree that the decision of the Board of Directors following their assessment of any allegation through the Complaints Resolution Process shall be binding on all Members. In the event that a Member is determined by the Board of Directors to have been in breach of this Code they may be excluded from the organisation for a period of time to be set by the Board or may be required to comply with some other decision of the Board, according to the severity of the breach.



# *ANNEX I*

## *COMPETITION COMPLIANCE POLICY*

### **1 INTRODUCTION**

- 1.1 Bonsucro is concerned that its members (**Members**) comply with the competition rules of the European Union (**EU**) and local, federal or national competition or anti-trust laws of other countries in which they operate (**Competition Rules**).
- 1.2 The object of the Treaty on the Functioning of the European Union is to create a single market with free movement of goods and services throughout the member states of the EU. To achieve this, the Treaty contains rules to prevent competition in that single market from being restricted by the actions of businesses. "Competition compliance" means compliance with those rules which are designed to ensure that competition is not restricted.
- 1.3 The Competition Rules are extremely broad in their effect. They apply not only to companies located within the EU but also to companies outside the EU whose conduct is regarded as having an effect on the EU market.
- 1.4 Although there are several potential consequences of a breach of the Competition Rules, compliance by Bonsucro and its Members is particularly important because Bonsucro may be implicated in a breach of the Competition Rules by its Members and may be subject to penalties as a result. It is also likely to cause damage to Bonsucro's reputation.
- 1.5 This policy sets out procedures and guidelines which must be followed by Members when dealing with matters to which competition laws may apply. It is intended to give examples of activities which commonly give rise to competition law compliance issues. Whether a particular practice infringes the Competition Rules will often depend on the market share of the party or parties involved and conditions in the market. This policy also provides an overview of the main rules of EU competition law.
- 1.6 Members should be aware that other national competition rules apply in some countries both inside and outside the EU. Members must ensure that they are aware of, and comply with all applicable Competition Rules. A breach or suspected breach of such rules or this policy by a Member may lead to their expulsion from Bonsucro.
- 1.7 This policy is not an exhaustive statement of the law and is not a substitute for taking legal advice.



## **2 ASSOCIATIONS**

- 2.1 The Competition Rules prohibit 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 the Competition Rules apply.
- 2.2 Bonsucro reserves the right to expel a Member if it reasonably suspects that 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 depending on the size and business of the Member and its role in the market.

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

- 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 a competitor the 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 off a Member's patch.
- 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 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 affects trade between EU Member states which has the object or effect of preventing, restricting or distorting competition within the EU 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 of the EU, 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 EU Competition Rules apply in all 27 EU Member states: Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Spain, the Slovak Republic, Slovenia, Sweden and the UK. Equivalent rules apply in Norway, Iceland and Liechtenstein, because the substance of the EU Competition Rules have been extended to cover all states within the European Economic Area (EEA), which currently comprises the 27 EU Member states and those three additional countries.

4.6 The rules can even apply to practices or transactions between companies located outside the EU if their effect is to distort competition within the EU market.



## CONSEQUENCES OF BREACH

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

