MedTech Europe Supplementary Competition Law Guidelines

Introduction

1. MedTech Europe, being a prominent trade association with a membership of numerous competitors, must ensure it and its members always act in compliance with competition law.

2. These Supplementary Competition Law Guidelines ("**Supplementary Guidelines**") supplement the MedTech Europe's Competition Law Guidelines approved by MedTech Europe Board on 29 April 2017 ("**Guidelines**") and aim to provide more specific guidance on certain specific topics or possible projects as set out below.

3. The Supplementary Guidelines outline the necessary measures and safeguards to ensure compliance with competition law in relation to the specific activities they cover.

4. Each of the below topics or projects are set out as examples of potential topics or projects and of how competition law affects them. They are not prohibited in and of themselves, and they are not exempted from the application of the Guidelines.

Topic 1: Developing and advocating specific (e.g., sustainability) criteria to public procurement authorities

5. In principle, MedTech Europe and its members can collectively lobby to authorities to promote and defend their legitimate interests (such as avoiding sustainability criteria that are unrealistic and/or not relevant for the medical technology industry). However, public procurement authorities are also actual or potential customers of members of MedTech Europe. Their procurement is moreover subject to bidding procedures.

6. MedTech Europe and its members should therefore make sure to avoid:

- **bid rigging and/or market partitioning/sharing**: MedTech Europe and its members should not discuss *specific* contracts/bids amongst themselves and/or with public procurement authorities. In other words, discussions should be limited to procurement policy in general (such as a framework for tenders across the EU).

- **boycotts**: MedTech Europe and its members cannot decide/agree:
  - to refrain from participating in public bids by authorities that refuse to acquiesce to MedTech Europe's requests; and/or
  - to agree criteria with authorities with the aim or the result that competitors of the members of MedTech Europe can no longer successfully participate in bids.

7. Any discussions within MedTech Europe for the purpose of deciding on a common position *vis-à-vis* public procurement authorities must comply with section B.2 of the Guidelines.

Topic 2: Product safety standards

8. The adoption of product safety standards by MedTech Europe is subject to section B.1 of the Guidelines. In addition to that, the following should be taken into consideration:

- All members of MedTech Europe should be able to participate in the development/selection of the standards.
- All willing companies should be able to adhere to the developed standards. Necessary Intellectual Property Rights must therefore be made available at fair, reasonable and non-discriminatory (FRAND) conditions.
- The developed standards must result from a transparent, objective and non-discriminatory procedure.
- The standards must be voluntary. This means that (i) participants should remain free to apply even higher safety measures and (ii) no company should be forced to adopt the standards. This also means that MedTech Europe and its members should neither explicitly nor implicitly disparage the products of non-participants, nor mislead authorities, customers, physicians, etc., into believing that products failing to meet the safety standard are unsafe.

9. Discussions within MedTech Europe for the purpose of setting the standard are subject to section B.2 of the Guidelines. Employees and members considering to be involved in these discussions should therefore first consult their respective Legal Departments for approval.

Topic 3: Tariffs

10. As indicated in the Guidelines, it is acceptable to discuss public policy and regulatory matters of general interest. This includes tariffs.

11. However, tariffs may represent a significant cost for MedTech Europe members and can influence their pricing strategy. While tariffs are publicly known information that can be freely discussed, their impact on an individual company and/or on a specific product is not. Such impact therefore constitutes commercially sensitive information that is subject to section B.2 of the Guidelines.

12. This means that MedTech Europe and its members can discuss the tariffs in general but cannot:

- discuss the impact they will have on an individual company and/or on a specific product; or
- discuss or signal to what extent the tariffs will be passed on to customers as this is a decision each member of MedTech Europe must make on an individual basis.

Annex I: Dos & don'ts

Dos	Don'ts
General	
– Adhere to the Guidelines – Seek legal advice in case of doubt – Whenever possible, provide context/background documentation to show legitimate objectives if requested later on	– Make comments that could be misinterpreted
Topic 1: Developing and advocating specific (e.g., sustainability) criteria to public procurement authorities	
– Discuss procurement policy in general e.g., Revision of EU Directive on Public Procurement,	– Discuss specific contracts or bids – Discuss or agree whether to participate in bids – Advocate for sustainability criteria that may result in competitors losing the ability to participate in bids
Topic 2: Product safety standards	
– Make sure that the procedure is transparent (*vis-à-vis* participants and stakeholders), objective and non-discriminatory – Keep the standard voluntary – Adopt strict measures to avoid anticompetitive exchanges of information	– Prevent companies that are not a member of MedTech Europe from participating in the development, selection and/or adherence off/to the standard – Denigrate non-participating competitors or products – Mislead authorities, customers, physicians, …
Topic 3: Tariffs	
– Discuss tariffs and their impact on the (European) industry in general	– Discuss the impact of tariffs on specific companies or products – Disclose to what extent tariffs will be passed on to customers.