

## CODE OF CONDUCT

### COMPETITION LAW COMPLIANCE

#### A. INTRODUCTION

- (1) [Gaia X] (the "**Association**") has as its non-profit purpose the promotion and facilitation of a federated data infrastructure and open software infrastructure to provide and operate federated cloud services which are based on European values for the data economy in order to strengthen the digital sovereignty of the Single European Market, allow sustainable advancement of benefits and potentials of data sharing, and create a common data ecosystem for users and providers in various public, industry and research domains. In this way, the Association contributes to more efficiency in exchanging data and better data protection, both on a national, European and international level.
- (2) The European Commission recognises that standardisation agreements usually produce significant positive economic effects, for example by promoting economic interpenetration on the internal market and encouraging the development of new and improved products or markets and improved supply conditions. Standards thus normally increase competition and lower output and sales costs, benefiting economies as a whole. Standards may maintain and enhance quality, provide information and ensure interoperability and compatibility - thus increasing value for consumers.
- (3) The fact that the purpose of Association is to promote competition and benefit the community as a whole does, however, not exempt the Association and its member undertakings (the "**Members**") from applicable competition laws. The Association is fully committed to ensuring compliance of the Association and its Members with applicable competition laws in all of its activities.
- (4) These Antitrust Guidelines are based on the competition law rules of the European Union. National competition laws of the EU Member States and many other countries worldwide have similar provisions.
- (5) The Association and all of its representatives and staff as well as all Members must comply with this Code of Conduct for Competition Law Compliance ("**Antitrust Guidelines**"). Third-party organisations that wish to participate in working groups

of the Association shall explicitly declare that they will only act in compliance with these Antitrust Guidelines.

- (6) These Antitrust Guidelines can only provide a general overview, but cannot replace concrete legal advice in individual cases. Each Member is responsible for compliance with these Antitrust Guidelines as well as the applicable competition laws that apply in any case. In case of doubt, the Member may seek legal advice from its own lawyers / legal department.
- (7) In case of a conflict, applicable competition law shall prevail against these Antitrust Guidelines.

#### **B. COMPETITION LAW PRINCIPLES**

The following guidelines shall apply to all the activities of and within the Association. In all these scenarios, it is essential to bear in mind that formal written agreements are not required for an antitrust violation to exist. Even informal and tacit agreements as well as concerted practices (“**Agreements**”) may violate competition law.

##### **1. NO PRICE-FIXING**

- (8) Agreements among competitors to fix prices are unlawful and competition authorities strictly enforce laws against price-fixing. Members should keep in mind at all times that the mission of the Association is to promote the development of a federal data infrastructure and open software infrastructure. Accordingly, the Association’s activities should not involve any individual member’s activities in pricing or marketing particular products. To avoid the risk of liability, Members should never discuss prices, pricing systems, or discounts relating to the Association or in conjunction with Association activities, nor should the Association ever be involved in members' pricing or marketing practices.

##### **2. NO MARKET OR CUSTOMER ALLOCATION**

- (9) Agreements among competitors involving the division or allocation of geographic markets or customers, or agreements to divide sales by product type are unlawful and competition authorities strictly enforce laws against such anti-competitive behavior.

**3. NO OUTPUT RESTRICTIONS**

- (10) Agreements between competitors restricting the volume of their supply or the production capacity (either for one or more parties) (“**Output restrictions**”) are unlawful and competition authorities also strictly enforce laws against such anti-competitive behavior.

**4. NO AGREEMENT ON OR EXCHANGE OF COMPETITIVELY SENSITIVE BUSINESS INFORMATION**

- (11) In order for the Association and its Members to produce useful work that promotes competition and benefits consumers, a certain amount of contact, interaction and information exchange between Members is necessary. However, where Members act as competitors at the same level of trade, Members must be aware that this raises potential competition concerns.
- (12) From a competition law perspective, there is a significant risk of (even unintended) exchange of competitively sensitive business information between Members. Any such exchange or even agreement on such parameters might be subject to investigation by competition authorities and substantial fines can be imposed for any infringement.
- (13) Competitively sensitive business information should not be discussed or otherwise shared or exchanged (regardless whether intentionally or not) both during Association meetings and on opportunity of Association meetings (social events, informal talks etc.) and no agreements must take place in this regard.
- (14) In particular, it is important that Members should not discuss, exchange information or even agree on any of the following individual competition law parameters:
- Individual prices or license fees, price components, price changes or pricing policy (such as future increase), discounts, rebates, surcharges, allowances or other factors affecting prices;
  - Individual terms or conditions of purchase, payment or sale;
  - Other information concerning individual agreements with customers, commercial data relating to specific customers or products, customer lists, supply areas;
  - Allocation of markets, customers or territories

- Individual manufacturing or selling costs, formulas or methods for calculation of costs, intracompany information on purchasing costs, production, stock levels and individual transactions;
  - Output quantities and capacities, reduction of production and output, market shares, also turnover;
  - Corporate strategies and intended future market conduct (e.g. sales strategies, investments, research, current or future product development, production or marketing policies or plans, including new product launches);
  - Other (confidential) topics such as statements on quality, business risks, investments, research and development (R&D) programs, technical developments.
  - Opportunities, orders and order volume
  - Plans to license intellectual property to or from third parties;
  - Offers, project tenders, submitted bids, intention to bid or other conduct during tenders;
  - Supply or purchase stops, boycott ("blacklisting").
- (15) Members should not seek to influence future market conduct of the other Members. Competition law infringements do not require a written or otherwise documented agreement. Mere disclosure of competitively sensitive business information to another competitor might be seen as a tacit agreement.
- (16) Members should share such information only if there is a direct connection with the performance of the Association's duties and only on a need-to-know basis.

## **5. CONSEQUENCES OF COMPETITION LAW INFRINGEMENT**

- (17) Infringements of European competition law may lead to severe company fines of up to 10% of total worldwide annual group turnover. The fines reflect gravity and duration of the infringement. Similar laws exist worldwide. In some jurisdictions, competition law infringement may result also in criminal penalties.
- (18) Competition law infringements might also result in damage claims: individuals or companies harmed by competition law infringements might bring forward compensation claims in national courts.

## **C. MEETINGS OF THE ASSOCIATION**

### **1. BEFORE THE MEETING**

- The Chair must prepare each meeting in accordance with the provisions of the Internal Rules.
- A written agenda must be provided/be made available to all participants prior to the meeting.
- Potential antitrust questions posed by the agenda should be raised in advance.
- The agenda should be accompanied by a copy of the Association's Table Card for Attending Meetings (see Annex to these Antitrust Guidelines).

### **2. DURING THE MEETING**

- At the beginning of each meeting, the Chair should instruct the participants on the importance of compliance with applicable competition law and these Antitrust Guidelines.
- The meeting must follow the prepared agenda. Only matters included in the agenda should be discussed.
- Members must not exchange competitively sensitive business information or disclose their course of conduct that they themselves have decided to adopt or contemplate adopting on the market.
- Each participant (not only the Chair) is responsible for compliance with applicable competition law and should immediately object actively to statements that are critical under aspects of competition law.
- In case of doubt, the discussion must be stopped and the topic postponed subject to legal clearance. If necessary, Members should leave the room and ensure this is recorded in the minutes. Members may seek their own legal advice.

### **3. MEETING MINUTES**

- The Chair must prepare concise minutes of the meeting including the attendance at the meeting.
- Minutes will be shared following the meeting with all attendees.
- Any deficiencies or disagreement on minutes should promptly be brought to the attention of all attendees.
- The minutes of the preceding meeting shall be approved at each meeting.

## **D. GENERAL WORKING STRUCTURE**

Under applicable competition law it is essential that the activities of the Association are conducted in a fair, open and transparent manner. To ensure compliance, the Association conforms to the following guidelines:

### **1. MEMBERSHIP**

- Upon application, Membership to the Association is open and accessible to any association, company, corporation, organisation, foundation, federation, or international institution/organisation duly constituted in accordance with the laws and practices of its country of origin, as well as to Member States of the European Union (“**Candidate Member**”) on non-discriminatory terms and based on reasonable, objective criteria as defined in the Association’s Articles of Association under #5.
- Any Candidate Member that fulfils the criteria as set out in the Association’s Articles of Association and that agrees to comply with the rules of the Association shall be admitted to Membership. In particular, the Association must not refuse to admit any Candidate Member unless the refusal can be objectively justified based on the criteria set out in the Articles of Associations.
- Any refusal or expulsion of Membership shall be justified and must be notified to the Candidate Member or Member as promptly as reasonably possible.
- The interested party or Member must be heard before the decision and the objections and discussion points of the Candidate Member or Member shall be addressed.
- Members are not excluded from or limited in joining other similar organisations as the Association.
- Membership in the Association shall not prohibit or limit Members from producing, selling or promoting products or services that do not make use of the Association’s platforms. Members are not required to exclusively use, announce or promote the platform’s tools or specifications.

### **2. PARTICIPATION IN TECHNICAL WORKING BODIES**

- Participation in the Association’s technical work shall be open to all interested Members.
- Where the participation in technical working bodies must be limited to ensure the working ability of this working body, such decision must be made upon

fair, reasonable and non-discriminatory terms. In this case other means of participation must be provided that ensure that all Members can read and comment on work items and that all comments are taken into consideration.

- Rules and procedures applicable to the technical work of the Association and in particular for the adoption of decisions shall be transparent.

**3. ACCESS TO SPECIFICATIONS AND STANDARDS**

- Access to specifications and other published work items of the Association is granted to Members and Non-Members on basis of fair, reasonable and non-discriminatory terms.

## TABLE CARD FOR ATTENDING MEETINGS

	<h3>Dos!</h3>
	<p><b>Before the meeting: Written agenda and invitation</b></p> <ul style="list-style-type: none"><li>• Check the invitation and agenda for critical topics.</li><li>• In case of doubt please get in contact with the Chair as early as possible before the meeting.</li><li>• Do not add topics to the agenda that may be critical under competition law aspects.</li></ul> <p><b>During the meeting and informal talks at the event</b></p> <ul style="list-style-type: none"><li>• Limit yourself to discussing topics that are relevant for the Association's work and that are mentioned on the agenda.</li><li>• Immediately (!) object actively to statements that are critical under aspects of competition law:<ul style="list-style-type: none"><li>○ Point out that this topic must not be discussed.</li><li>○ Demand that discussions on such topics are postponed if necessary or that the meeting is suspended until clarification as to whether this is acceptable under competition law.</li><li>○ If necessary, leave the room and ensure this is recorded in the minutes.</li></ul></li></ul> <p><b>After the meeting: Meeting minutes</b></p> <ul style="list-style-type: none"><li>• Each topic discussed during the meeting must be documented in writing.</li><li>• Check the meeting minutes for correctness. Where necessary, please ask for correction of the meeting minutes.</li></ul>
	<p><b>Competitors may discuss the following issues relating to the Association's purpose:</b></p> <ul style="list-style-type: none"><li>• Association related topics, for example recent legislation which is of interest to a number of companies;</li><li>• The Association's lobbying activities, for example statements of the Association on recent draft legislation and understanding of administrative regulation;</li><li>• Experiences, insights and questions with regard to non-confidential technical issues relevant for all Members (e.g. on norms and standards, technical and technically scientific developments);</li><li>• The development and technical requirements of the standard and other work items such as programming, selection and composition of contributions etc.;</li><li>• General exchange on freely available data of national or international administrative bodies or scientific institutions or market research institutions where such exchange has no impact on the individual market behaviour of the Members.</li></ul> <p>Exchange of <b>statistic information</b> only where:</p> <ul style="list-style-type: none"><li>• General, historic, non-confidential or sufficiently aggregated information is exchanged; <u>and</u></li></ul>

- Data exchange does not enable identification of single Member's response or is conducted by an independent third party guaranteeing for confidentiality of response.

## **X** Don'ts!

### **X**

**Competitors may not (formally or informally) discuss or exchange information or even enter into agreements on the following issues:**

- Individual prices or license fees, price components, price changes or pricing policy (such as future increase), discounts, rebates, surcharges, allowances or other factors affecting prices;
- Individual terms or conditions of purchase, payment or sale;
- Other information concerning individual agreements with customers, commercial data relating to specific customers or products, customer lists, supply areas;
- Allocation of markets, customers or territories
- Individual manufacturing or selling costs, formulas or methods for calculation of costs, intracompany information on purchasing costs, production, stock levels and individual transactions;
- Output quantities and capacities, reduction of production and output, market shares, also turnover;
- Corporate strategies and intended future market conduct (e.g. sales strategies, investments, research, currents or future product development, production or marketing policies or plans, including new product launches);
- Other (confidential) topics such as statements on quality, business risks, investments, research and development (R&D) programs, technical developments.
- Opportunities, orders and order volume
- Plans to license intellectual property to or from third parties;
- Offers, project tenders, submitted bids, intention to bid or other conduct during tenders;
- Supply or purchase stops, boycott ("blacklisting").

**Avoid critical topics in official meeting and informal talks at the event in any case. Do not participate in such talks – not even listening!**