



EUROPEAN COMMISSION
DG COMPETITION

The Director-General

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Consultadoria Empresarial e Fomento da
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By email:
[...]

Subject: Comfort letter: cooperation at a Matchmaking Event – Towards COVID-19 vaccines upscale production

Dear [...],
Dear [...],

I refer to our correspondence and contacts between 19 and 25 March 2021 regarding the organisation of the “Matchmaking Event – Towards COVID-19 vaccines upscale production” and the information you have provided in relation to this Matchmaking Event as described below.

The Matchmaking Event

We understand that the Matchmaking Event aims to increase the capacities to produce and supply COVID-19 vaccines that are authorised in the EU or for which authorisation is sought in the EU in due course. In our exchanges, you have, as co-organisers of the event, requested a comfort letter concerning the compliance of the Matchmaking Event with EU competition rules, in particular as regards the exchanges of commercial information under Article 101 of the Treaty on the Functioning of the European Union (TFEU) on agreements and concerted practices that restrict competition.¹ Specifically, the question of compliance

¹ Since the entry into force of Council Regulation (EC) No 1/2003, undertakings can no longer notify their agreements to the Commission in order to receive an individual exemption from Article 101 TFEU, but

with the EU competition rules has arisen both in relation to how the event itself is organised and structured, as well as to the contacts and exchanges between participating companies which take place during this event.

The Matchmaking Event is co-organised by Ecorys Europe EEIG-GEIE, the main contractor and the signatory for the consortium of the European Cluster Collaboration Platform (ECCP)², and SPI, a consortium partner responsible for the operational organisation of the Matchmaking Event (together – “the Co-organisers”). The Co-organisers will organise the Matchmaking Event on behalf of the European Commission as the host of the event³.

The Matchmaking Event is an on-line event taking place on 29 and 31 March 2021 on B2Match, a third-party platform managed by SPI. According to the information provided, the participating companies will be able to schedule numerous meetings online and discuss possible partnerships during 20 minutes time slots under the condition of full confidentiality (i.e. neither the Co-organisers, nor any other participating company not invited to the specific meeting will be technically able to attend or otherwise be privy to the content of the meeting).

The Matchmaking Event provides the B2Match platform for manufacturers of relevant raw materials, companies with relevant production capacities, or other key inputs for COVID-19 vaccines to engage with the developers and manufacturers of the vaccines seeking to match their demand with the supply of potentially scarce inputs. We understand that over 300 companies operating mainly at different levels of the supply chain, but also companies competing directly on the same market level (e.g. vaccine developers), have already expressed interest in participating at this Matchmaking Event, which was open to any operator concerned with production capacity in the EU.

Public Health Emergency

Vaccines for COVID-19 are the essential means to respond to the current public health emergency, and necessitate a rapid response also due to the uncertainty linked to the increased spread of new SARS-CoV-2 variants.

We understand that, in view of the urgent demand for COVID-19 vaccines, the pharmaceutical industry and other companies active in the production of inputs for vaccines, with the support from the EU and the Member States, are endeavouring to increase supplies of vaccines that are authorised in the EU and address the risk of shortages for COVID-19

they are responsible for assessing themselves the legality of their agreements and practices. Notwithstanding, in view of the unprecedented challenges faced by undertakings and consumers due to the COVID-19 pandemic, the Commission has decided to exceptionally provide undertakings with ad hoc feedback or comfort on the legality of cooperation initiatives that need to be swiftly implemented in order to effectively tackle the COVID-19 pandemic, see Communication from the Commission of 8 April 2020, “Communication on a Temporary Framework for assessing antitrust issues related to business cooperation in response to urgency situations stemming from the current COVID-19 outbreak”.

² Service contract with the Executive Agency for Small and Medium-sized Enterprises (EASME): European Cluster Collaboration Platform (ECCP), term of the contract: 9 December 2019 - 8 December 2021.

³ “Task Force for Industrial Scale-up of COVID-19 vaccines”, set up in DG GROW under the direct responsibility of Commissioner Thierry Breton.

vaccines, including by seeking complementary available production capacities along the entire value chain. The Commission's Communication on the HERA incubator⁴ recognises that producers of COVID-19 vaccines are facing bottlenecks in many parts of the supply chain, including access to raw materials and other essential inputs. The Communication also notes that one of the fastest ways to increase production is to engage with companies that already have available and relevant capacities.

In keeping with this, the objective of the event is to bring together relevant EU-based assets of companies that could contribute to accelerating and ramping up of the production of COVID-19 vaccines. Specifically, the Matchmaking Event aims at creating new collaboration opportunities between companies along the value chain to address bottlenecks linked to the production and supply of the COVID-19 vaccines.

Compliance with EU competition law

We understand that, at an introductory webinar held on 19 March 2021, the Co-organisers have informed the participating companies of the need to observe EU competition law in contacts taking place on the B2Match platform during the Matchmaking Event. The Co-organisers have also committed to remind the participating companies of the applicable rules before the Matchmaking Event and that a summary of applicable EU competition law rules will be accessible on the B2Match platform throughout the Matchmaking Event.

Based on the available information, the information exchanges occurring between participating companies during the Matchmaking Event and aimed at finding partners with complementary capabilities and skills to achieve a faster production of urgently needed COVID-19 vaccines, including through quicker delivery of key inputs, serve to increase the overall output of COVID-19 vaccines. The Commission therefore considers that the organisation of and the participation at the Matchmaking Event, do not raise concerns under Article 101 TFEU in the specific circumstances at hand, provided that:

- in relation to matchmaking meetings between *any companies* (regardless of whether they are competitors or active at different levels of the supply chain), any exchange of confidential business information will be limited to what is indispensable for effectively resolving the supply challenges linked to Covid-19 pandemic; and
- in relation to any matchmaking meetings between *direct competitors*,
 - companies will not share any confidential business information regarding their competing products, in particular information relating to prices, discounts, costs, sales, commercial strategies, expansion plans and investments, customers list, etc.;
 - direct competitors will keep a record of which topics they discussed.

If direct competitors were to consider that exchanging confidential business information in relation to competing products would be indispensable to finding solutions for scaling-up production or supply of COVID-19 vaccines, they should contact the Commission for specific guidance at COMP-COVID-ANTITRUST@ec.europa.eu at least 24 hours before engaging in any such exchange in the context of the Matchmaking Event.

⁴ Communication of 17.2.2021 from the Commission to the European Parliament, the European Council and the Council, "HERA Incubator: Anticipating together the threat of COVID-19 variants", COM(2021) 78 final.

In addition, the Commission considers that the Co-organisers should keep a record of which companies have been meeting during the Matchmaking Event for the term of the contract⁵, and make it available to the Commission upon request.

This comfort letter does not cover any discussion of prices between direct competitors or any other possible cooperation between them (other than exchanging non-confidential information in the context of the Matchmaking Event).

This comfort letter also does not apply to any subsequent cooperation between non-competitors resulting from the Matchmaking Event, for which the companies will remain responsible to self-assess the compatibility with EU competition law.⁶

For specific cooperation initiatives with an EU dimension between competitors or non-competitors that need to be swiftly implemented in order to effectively tackle the COVID-19 pandemic, and where there is uncertainty about whether such initiatives are compatible with EU competition law, the Commission is ready to provide guidance to companies, associations and their legal advisors⁷. Conduct which seeks to exploit the crisis as a ‘cover’ for engaging in collusion or other anticompetitive behaviour will not to be tolerated by the Commission.

In light of these considerations, the cooperation of participating companies in the context the Matchmaking Event, in particular by exchanging relevant commercial information, does not raise concerns under Article 101 TFEU, provided that the competition law principles set out above are observed. In reaching this conclusion, we have consulted the National Competition Authorities that together with the European Commission constitute the European Competition Network.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Olivier Guersent', written over a light grey circular stamp.

Olivier GUERSENT

⁵ Upon the expiry of the contract, the Co-organisers should transfer these data to DG GROW.

⁶ See notably Commission Notices: Guidelines on the application of Article 81(3) of the Treaty (OJ C 101, 27.4.2004, p. 97) (“Guidelines on Article 101(3)”), Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements (OJ C 11, 14.1.2011, p. 1) and Guidelines on Vertical Restraints, (OJ C 130, 19.5.2010, p. 1).

⁷ Contact for specific guidance: COMP-COVID-ANTITRUST@ec.europa.eu.