Helix Nebula Antitrust Guidelines

INTRODUCTION

The project "Helix Nebula - the Science Cloud" will support the massive IT requirements of European scientists and aims to pave the way for the development and exploitation of a Cloud Computing Infrastructure, initially based on the needs of European IT-intense scientific research organisations, while also allowing the inclusion of other stakeholders' needs (governments, businesses and citizens).

Knowing, understanding and applying competition law is a major concern for all players within Helix Nebula, especially as many of them are major players in IT in Europe. Accordingly, Helix Nebula has adopted these Antitrust Guidelines for itself, its members and all attendees, customers and other participants, as guidance in connection with participation in Helix Nebula's activities.

All participants should note that this document is a general guide only. It is not intended to be a complete and definitive statement of all aspects of competition laws, nor does it advise with respect to the competition laws of all countries. In case of any doubt, one should therefore seek the assistance of legal counsel experienced in competition law matters.

OVERVIEW OF COMPETITION LAW

1. BACKGROUND

Competition law is aimed at allowing firms to compete on level playing field. It ensures that competition in the market is not distorted and that markets operate as efficiently as possible. It encourages economic efficiency by creating a climate favourable to innovation and technical progress and ultimately safeguards the welfare of consumers. These laws require that business people make independent business decisions without consultation or agreement with competitors. The success of Helix Nebula requires that free and open competition be adhered to as the policy of Helix Nebula and that all Helix Nebula members follow this policy.

2. WHAT IS COMPETITION LAW?

a. Competition Law firstly prohibits agreements or concerted practices between undertakings as well as decisions of associations of undertakings which restrict competition subject to some limited exceptions. Each participant is obligated and expected to exercise its independent business judgement in pricing its services or products, dealing with its customers and suppliers, and choosing the markets in which it will compete.

The form of the agreements between the competitors is not relevant. Even an unwritten agreement can be considered as illegal under a competition law perspective. Gentlemen's agreements and any other type of informal unwritten agreements between competitors are found to meet the requirement. The existence of an anti-competitive agreement may even be inferred from all the circumstances.

Competition law applies to both horizontal and vertical agreements. Horizontal agreements are agreements between actual or potential competitors, i.e. between undertakings at the same stage in the production or distribution chain. Vertical agreements are agreements between two or more undertakings each of which operates, for the purpose of the agreement, at a different stage of the production or distribution chain. Examples of horizontal anti-competitive practices which might in principle arise are price fixing, market and customer allocation, restrictions in licenses of intellectual property rights, boycotts. An example of vertical agreements is the so called resale price maintenance.

b. Furthermore, Competition Law prohibits any abuse of a dominant position by one or more undertakings which may affect trade between Member States of the European Union (EU).

3. CONSEQUENCES OF INFRINGEMENTS OF COMPETITION LAW

The most obvious consequence of infringement of Antitrust Law is that very often such infringements would be brought to the attention of the national competition authorities, national courts or the European Commission via a complaint or another means. If the relevant practice constitutes an agreement, it will be considered unenforceable. Both the European Commission and national competition authorities can impose significant fines (of up to 10% of annual worldwide turnover) if an infringement is found on undertakings that violate EU antitrust rules. In addition, national courts can impose damages against the infringer.

Helix Nebula reserves the right to take any and all reasonable and appropriate disciplinary actions against any participant who fails to comply with these Guidelines or antitrust laws in connection with their participation in Helix Nebula.

GUIDELINES FOR ANTITRUST COMPLIANCE

In order to minimize the aforementioned risks of anti-competitive behaviour whilst developing and exploiting of a Cloud Computing Infrastructure, the following Guidelines shall be observed:

1. MEETINGS

At all meetings of the Management Team, any Supplier meeting, or of any other team or work group, a statement substantially similar to the following will be read at the beginning of the meeting and recorded in any notes/minutes:

This is a reminder that all Helix Nebula activities are subject to strict compliance with Helix Nebula's Antitrust Guidelines. Each individual participant and attendee at this meeting is responsible for knowing the contents of the Antitrust Guidelines, and for complying with the Antitrust Guidelines. Copies of the Antitrust Guidelines are available on the Helix Nebula web site.

2. ACTIVITIES IN HELIX NEBULA

a. These Guidelines shall be promulgated to all participants and all participants shall abide by these Guidelines.

b. Discussions, communications or any other exchange of information in all Helix Nebula meetings, on the edge of all Helix Nebula meetings (e.g.: informal discussions, social gatherings, corridor talks etc.) should not have as their subject matter the following topics, discussion of which (among other things) is prohibited by competition law:

   - pricing strategies or product pricing,
   - terms and conditions of sale including discounts and allowances, credit terms, etc.
   - production levels or capacity,
   - limitation of technical development or investment,
   - allocation of sales territories, markets or customers, market shares,
   - submitted bids or intentions to bid,
   - preventing anybody from gaining access to any market or customer for goods and services,
   - refusals to deal or do business with competitors, vendors or suppliers and
   - ongoing litigation or threatened litigation.

c. Members should be careful not to make agreements that in effect result in the exclusion of a competitor from a market or a competitive activity. For example, an agreement among two or more members of Helix Nebula to no longer buy from (or sell to) a particular supplier or distributor might constitute such a boycott. To avoid this risk, members should avoid any discussion or conduct that involves the refusal to deal with a particular supplier or customer.

d. Great care must be taken in the setting of standards. First, there is a potential for challenge to standard setting activities as a boycott. Second, when members of a standards setting body submit technology and vote on that technology, there is the potential for one company, or a group of companies, to act in ways deemed to be unfair to other companies.

3. "Do's" and "Don'ts"

a. Please do:

- Do use your best efforts to comply with antitrust laws.
- Do limit exchange of information to what is necessary for what is reasonably related to the legitimate purposes of Helix Nebula (strictly “need-to-know”)
- Do exchange purely historical information, collation of price trends, general industry studies, market research, government policy, technological/scientific developments.
- Do ensure that Guidelines, specifications, standards, test procedures, and certification programs, which may be developed, administered, approved, or adopted by Helix Nebula, are based upon appropriate technical, business and consumer considerations, and are not based upon any effort or purpose to reduce or eliminate competition in the sale, supply and furnishing of products and services.

- Do seek guidance from legal counsel whenever questions arise as to the appropriate scope of discussions or information exchanges. If you believe someone has raised a potentially improper topic, cut off the discussion and seek legal guidance.

b. Please do not:

- Do not exchange competitively sensitive information such as:
  - Non-public marketing plans and long term strategic planning documents;
  - Current or prospective pricing or bidding information, including specific price strategies, price formulas, discounts, credits and other terms of sale that could be used competitively;
  - Specific plans to expand or reduce product lines or lines of business;
  - Projected detailed, line-item cost information (for example, from which pricing can be determined);
  - Specific transaction information (e.g., pricing terms) relating to competitive elements of sales and supply agreements; and
  - Trade secrets and other proprietary technology and data.
- Do not use information shared for any commercial purpose;
- Do not coordinate commercial behaviour;
- Do not discuss allocating markets, customers, suppliers or territories;
- Do not complain that a competitors' prices constitute unfair trade practices;
- Do not discuss refusing to deal with a company because of its pricing or distribution practices.