

# ANONYMOUS v MERCK SERONO

## Sponsorship to attend, and subsistence at, an international meeting

An anonymous, non-contactable, fertility health professional complained about the conduct of Merck Serono personnel at the European Society of Human Reproduction and Embryology (ESHRE) conference in Munich. The complainant alleged that a named company employee and a sales team were in hotel restaurants and bars with fertility health professionals drinking alcohol into the early hours of the morning every night; this created an inappropriate and unprofessional impression of the pharmaceutical industry.

The complainant submitted that Merck Serono hosted the same health professionals at ESHRE year after year, ie those who used Merck Serono products, which was not in the spirit of supporting appropriate education for the wider profession. The complainant alleged that he/she was told by his/her local sales representative that he/she did not prescribe enough Gonal-f (follitropin alpha) to warrant an invitation to attend ESHRE with Merck Serono.

The detailed response from Merck Serono is given below.

The Panel noted the complainant was anonymous. As stated in the introduction to the Constitution and Procedure, such complaints were accepted and like all complaints, judged on the evidence provided by both parties. Complainants had the burden of proving their complaint on the balance of probabilities; as the complainant was also non-contactable it was not possible to ask him/her for further information.

The Panel noted that the Code allowed companies to provide limited hospitality to members of the health professions and appropriate administrative staff in association with scientific meetings, promotional meetings, scientific congresses and other such meetings, and training. The Panel also noted that the provision of hospitality and other interactions between the pharmaceutical industry and health professionals outside the formal congress proceedings at international congresses was a subject that attracted much public scrutiny and criticism. Companies should be mindful of the impression given by such interactions and ensure that when applicable, such activity complied with the UK Code.

The Panel noted that the Merck Serono policy document 'Congresses/Meetings and Hospitality FAQ' reflected the requirements of the Code and stated, *inter alia*, that outside of subsistence provided in association with appropriate meetings 'it is not appropriate to go to the hotel bar or other venue and buy alcoholic drinks for customers'. The Panel accepted that company employees would

want to wind down away from health professionals at the end of a full congress day. However, company employees were in the conference city as representatives of their company for business reasons and as such they must be mindful of the impression created by their behaviour beyond the formal conference proceedings and associated subsistence. This was especially so in a late night social environment.

The Panel noted the complainant's allegation that a named employee and Merck Serono staff, together with health professionals, drank alcohol into the early hours of the morning at hotel restaurants and bars. No supporting evidence had been provided by the complainant.

The Panel noted that a buffet at the hotel restaurant where sponsored delegates were staying was provided on Sunday, 29 June at a cost of €60 per delegate. A set meal at an external restaurant was provided on Monday, 30 June at a cost of €55 per head. The company's responses and invoices did not quantify the amount of alcohol that was provided in relation to either event. In the absence of such information, the Panel considered that it was difficult to see how the arrangements could have been approved. On Tuesday, 1 July, dinner at an external restaurant included a beverage package which included two glasses of wine, one coffee and half a bottle of water at €22 per delegate. Whilst noting its comments above, the Panel considered that there was no evidence to indicate whether the consumption of alcohol at restaurants on 29 and 30 June was inconsistent with the Code. The complainant bore the burden of proof in this regard. Consumption on 1 July appeared to be consistent with the relevant requirements. The Panel ruled no breach of the Code.

In relation to hotel bars, the Panel noted Merck Serono's submission that health professionals were taken back to the hotel after dinner where some might have remained in the bar, but if they did so, it was at their own account. The Panel noted that on each night, staff incurred bar expenses at the hotel bar. The Panel noted that according to Merck Serono, on Sunday, 29 June a bar tab for employee drinks (nine staff) for €217.10 was settled at around midnight. The Panel queried whether it was appropriate to choose the hotel bar for a late night staff drink given one could reasonably assume that health professionals staying at the hotel would also be present. The Panel noted Merck Serono's submission that whilst health professionals were in the bar, they did not participate in the staff social activity nor were they seated nearby. The Panel queried whether this distinction would be clear to third parties or to those health professionals who had dined with the employees earlier that

evening. The Panel had no information about the layout of the bar nor whether at the relevant times it was a quiet or noisy environment. Similar comments applied to Monday, 30 June and Tuesday, 1 July although the monies spent and numbers of employees involved were less. Whilst the Panel was concerned as outlined above it noted that the complainant bore the burden of proof. Taking all the circumstances into account the Panel noted that although Merck Serono employees had consumed alcohol in the hotel bar late at night, there was no evidence that they had bought drinks for any of the health professionals present or otherwise socialised with them as alleged and thus no breach of the Code was ruled.

The Panel noted its rulings above and considered that there was no evidence that the conduct of the Merck Serono staff had created an inappropriate and unprofessional impression of the pharmaceutical industry nor that the company had brought the industry into disrepute. No breaches of the Code were ruled.

In relation to the allegation that the same health professionals were hosted year after year by Merck Serono and that the complainant had been told by his/her local representative that he/she did not prescribe enough Gonal-f to warrant an invitation to attend ESHRE with the company, the Panel noted emails from all relevant representatives which stated that none of them had ever had such a discussion with any of their health professionals. The Panel considered that on the information before it there was no evidence that a representative had told the complainant that only good prescribers of Gonal-f would be sponsored to attend. No breaches of the Code were ruled.

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## COMPLAINT

The complainant alleged that a named employee and his/her sales team were in hotel restaurants and bars with fertility health professionals drinking alcohol into the early hours of the morning every night. In the complainant's view their actions created an inappropriate and unprofessional impression of the pharmaceutical industry.

The complainant further alleged that Merck Serono hosted the same health professionals who used Merck Serono products at ESHRE year after year. This was not in the spirit of supporting appropriate education for the wider profession. The complainant stated that he/she was told by his/her local sales representative that he/she did not prescribe enough Gonal-f (follitropin alpha) to warrant an invitation to attend ESHRE with Merck Serono.

When writing to Merck Serono, the Authority asked it to consider the requirements of Clauses 2, 9.1, 18.1 and 19.1 of the Code.

## RESPONSE

Merck Serono explained that the ESHRE conference was an annual and preeminent, key, scientific and clinical meeting for fertility specialists and other affiliated specialities globally. Sponsorship of UK health professionals to ESHRE complied with the requirements of the Code, and all arrangements were formally certified in advance. Additionally the conference met the required standard for education and scientific content such that sponsorship of health professionals for attendance outside of the UK was not deemed inappropriate.

Merck Serono submitted that the employee named by the complainant, had many years' experience and had passed the ABPI examination and a copy of his examination certificate was provided together with a summary of the related expenses from the ESHRE meeting.

Before the ESHRE meeting, the named employee and the sales team were briefed with regard to meetings and hospitality frequently asked questions (FAQ). Merck Serono noted in particular a section of the FAQ briefing which stated:

'Q When can I provide refreshments for health professionals ?

A Subsistence can be provided in association with appropriate meetings (which have an educational content) and the arrangements (content, venue and cost) are examined via the Zinc process. Depending upon the event, refreshments range from a buffet to a meal and up to half a bottle of wine per person. It should not include alcoholic spirits, liquors or sparkling wine. It's not appropriate to serve alcoholic drinks during lunchtime meetings. Outside of this, it is not appropriate to go to the hotel bar or other venue and buy alcoholic drinks for customers. We should be sensitive to the external perception of our interactions with customers, particularly late at night in social environments such as bars, even if we have not paid for their drinks or had any involvement with arranging hospitality.'

It was clear from the above that Merck Serono prohibited activities such as those alleged. There was no evidence from analysis of the expenses of the Merck Serono personnel that they were in hotel restaurants and bars with fertility health professionals drinking alcohol as alleged. The named employee and the sales team categorically denied the allegations and Merck Serono was absolutely confident in their responses.

Merck Serono noted that the complainant had offered no evidence as to the veracity of the events; standard instructions to sales representatives were clear on these matters, and receipts showed that such activity could not have occurred.

Merck Serono's representatives who attended the ESHRE conference were instructed about appropriate conduct during conferences and interactions with health professionals before the meeting.

Merck Serono stated that 68 UK health professionals were selected for sponsorship on the basis of their 'expertise, knowledge, experience and profile within their designated geography'. Those sponsored to attend the ESHRE conference were all considered to be regional leaders within their area of speciality (ie nursing, embryology, specialists in reproductive medicine) and were selected in accordance with Merck Serono's standard operating procedure (SOP). Health professionals selected to attend were emailed a certified invitation which was co-ordinated by an events agency and Merck Serono's medical department. Any correspondence regarding invitations and sponsorship were communicated solely by the events agency and Merck Serono's medical department. Neither the sales team nor the named employee were involved in the invitation process and any queries from invitees were directed to the medical department.

Merck Serono submitted that in the previous four years (2010-2013), 4 of the 68 delegates to the 2014 ESHRE meeting had been sponsored by the company every year, 3 had been sponsored 3 times, 10 had been sponsored twice, 14 had been sponsored once before and 34 (50%) had never been sponsored before. Full delegate data was also provided.

Delegates were provided with economy flights, hotel accommodation and subsistence in a manner consistent with the Code. Supporting documentation was provided which Merck Serono stated was evidence of compliance.

In summary, Merck Serono denied allegations of inappropriate hospitality and inappropriate sponsorship of health professionals to attend the ESHRE conference, and contended that no breaches of Clauses 2, 9.1, 18.1, or 19.1 had occurred.

In response to a request for further information, Merck Serono submitted a full list of the eleven Merck Serono employees and the two third party agency personnel who attended the ESHRE conference in 2014, their job titles and the reason for their attendance at the conference. Merck Serono submitted that attending the conference was crucial for the development of its employees who worked within the medical department and fertility business franchise; they could update their knowledge and understanding of current trends within reproductive health and to discuss, review and understand newly presented data. The two events agency staff who attended were responsible for managing all onsite logistics and liaison with third party vendors including; transport providers for all airport and dinner transfers; managing the restaurants for offsite dinners; the hotel team in relation to accommodation and the congress team in relation to collection of congress passes. Agency personnel were also involved in the management of communication to attendees via the information desk at the hotel.

Merck Serono provided a full account of all expense claims (including those related to ESHRE) for each named Merck Serono employee, expenses for the agency personnel, which were included on the final hotel master invoice (provided). Expenses

included accommodation and some extra costs for telephone calls, food and beverages for their personal subsistence. A summary was provided. In addition agency personnel also incurred some expenses travelling to and from the hotel, airport and congress centre. Merck Serono stated that this was a full account of all expenses incurred by the events agency personnel engaged on behalf of Merck Serono in relation to the ESHRE meeting.

Merck Serono confirmed that all expenses relating to the ESHRE meeting for all staff that attended (and agency personnel) had now been submitted. A full and detailed account of all expenses relating to ESHRE for the named employee and the sales team had already been provided; Merck Serono initially responded with information limited to these employees because the complaint specifically stated '[named employee] and his sales team were in the hotel restaurants and bars with fertility healthcare professionals'.

The details provided reflected all expenses submitted relating to ESHRE 2014. All hospitality and subsistence arrangements for staff and delegates were organised before the meeting via the events agency. Therefore, the vast majority of expenses for all staff and delegates was included in the overall master bill which Merck Serono paid directly to the events agency. Staff thus only submitted minor incidental expenses that were outside of the overall service agreement with the agency (which covered evening subsistence for 3 nights 2014).

A full detailed account of the individual hospitality provision for each night was provided:

#### **Sunday, 29 June 2014**

Rolling buffet dinner (8-10pm) in the hotel restaurant, based on a maximum allowance of €60 per person for 90 people, which included beverages. The relevant extract from the master hotel bill and copy of the master invoice was provided.

#### **Monday, 30 June 2014**

Dinner at a city centre restaurant – set dinner menu with drinks, €55/person for 89 people. A copy of the master invoice was provided.

#### **Tuesday, 1 July**

Dinner at a city centre restaurant – set dinner menu with drinks for 80.

A breakdown (including reference to 2 glasses of wine, ½ bottle of water and 1 coffee per person @ £22) and a master invoice was provided.

#### **Wednesday, 2 July**

No hospitality was provided; delegates departed throughout the course of the day.

In accordance with Clause 14.2 of the Code, the full meeting arrangements for the ESHRE 2014 conference, including the hospitality arrangements, were formally certified in advance. A copy of the

relevant Zinc certificate was provided. In particular, the hospitality arrangements were certified with a maximum allowance of €60/person for food and drink. Merck Serono noted that on the final night (Tuesday, 1 July) this maximum allowance was increased to €63 per person (detailed above) based on the set menu options provided by the restaurant. This increase was approved by a final signatory who deemed that this was an acceptable level of subsistence and still within the maximum allowance (£75) set out in Clause 19.2.

Merck Serono advised there were no planned after dinner events or activities during the ESHRE meeting. Health professionals were taken back to the hotel after dinner where some might have decided to remain in the hotel bar, but if they wished to do so, it was on their own account.

Prior to attending ESHRE, all Merck Serono employees were given guidance on appropriate conduct during meetings as provided previously in the 'Meetings and Hospitality FAQ, the relevant extract was provided.

'It is not appropriate to go to the hotel bar or other venue and buy alcoholic drinks for customers. We should be sensitive to the external perception of our interactions with customers, particularly late at night in social environments such as bars, even if we have not paid for their drinks or had any involvement with arranging hospitality.'

The 'Meetings and Hospitality FAQ' was sent out to all Merck Serono employees. Further training of the Merck Serono Global Policies relating to 'Meetings' was also provided via WebEx to all relevant sales and marketing employees. This was the only briefing specifically given to representatives about their conduct and activities during the ESHRE meeting.

All relevant Merck Serono representatives involved with the meeting strongly denied that the comments, 'Sponsorship was denied by the local Merck Serono representative because [the complainant] did not prescribe enough Gonal F' were mentioned and indeed that they would never have this conversation with a health professional. Copies of emails from all relevant representatives were provided. Merck Serono confirmed that the sales force had never been asked to make such a comment.

Merck Serono provided further explanation regarding its initial response which indicated that health professionals were selected for sponsorship on the basis of expertise, knowledge, experience and profile within their designated territory. The company explained that the comment 'profile within their designated territory' referred to a health professional's seniority and influence with his/her designated area (ie his/her specific fertility clinic, or regional area). The two objectively defined criteria used for selection were:

Senior fertility specialists recognised as local/regional/national influencers.  
No more than two customers per centre.

All sales and marketing employees were briefed on the selection and invitation process for ESHRE 2014 at a team meeting in January (Zinc certified slides used at the meeting were provided). The briefing provided an overview of the arrangements at that point in time and the slides confirmed the following details to all staff involved in the fertility franchise:

- Progress and arrangements with regard to the ESHRE meeting so far
- A 'Save the Date' flyer would be sent out to customers (once selected) to encourage earlier registration for the meeting
- The medical team were to have primary responsibility for selection of delegates for sponsorship to ESHRE
- The overall number of delegates to be sponsored across UK and Ireland
- The objectively defined criteria that would be used for selection (senior fertility specialists recognised as regional/national/international influencers and no more than 2 per cent)
- Finally, the sales team was asked to nominate potential delegates for sponsorship to the medical team for consideration based on the criteria above as well as any direct requests for sponsorship they might have already received from health professionals.

Further to the above, names and contact details of potential delegates were forwarded to the medical team for consideration, which then reviewed the details based on the two criteria and directly invited selected health professionals to register. The sales and marketing team was informed of who had been selected for invitation but was not involved in the selection process. Furthermore, all communications regarding sponsorship selection and invitations were coordinated solely by the medical department with no involvement of the sales representatives. Sales representatives were instructed to channel all queries about invitations and sponsorship to the medical department. A copy of a relevant slide from the January team meeting was provided.

Merck Serono provided copies of ABPI certificates for the relevant sales employees.

In response to a further request for information, Merck Serono confirmed that there were no after dinner events, hospitality or activities either planned or unplanned during the ESHRE 2014 conference.

Further to the Panel's request Merck Serono had asked the hotel in Munich to provide a detailed breakdown including original receipts.

Merck Serono confirmed that one named employee did not incur any incidental expenses related to the ESHRE conference and therefore no information was previously provided on her behalf. The company provided the expense reports (with receipts) for this member of staff which related to June and July 2014 to substantiate this.

Finally, Merck Serono explained that the 13 additional names from the master bill which did not match the previous list of UK delegates provided were health professionals from the Republic of

Ireland. Furthermore, two rooms which appeared in the master bill as Merck Serono bedrooms were not for Merck Serono employees as the named persons were health professionals.

Merck Serono subsequently provided timed receipts for employees staying at a hotel in Munich.

In response to a further request for further information, Merck Serono stated that it had endeavoured to provide all the relevant materials to the review of this case and had supplied thus far all the specific items requested by the PMCPA.

As stated previously, the hotel had only been able to provide receipts based on what was logged on its accounts system, and the original bar receipts were not retained. It should also be noted that the times logged on the receipts provided to the Panel were the times that the expenses were logged on the hotel accounts system and not when the final bills were paid at the bar. This was confirmed during subsequent interviews with each staff member who attended ESHRE.

An advanced party of Merck Serono staff arrived in Munich on Saturday, 28 June 2014 due to their involvement in various briefing meetings the following day. The staff present had arranged to meet in the hotel restaurant for dinner (Merck Serono referred to a hotel invoice for a named employee dated 28 June 2014 for €183.70). Merck Serono stated that no health professionals were present at this dinner only 6 named Merck Serono staff: [The six staff named included two who Merck Serono had not previously identified as attendees].

A full account of expenses relating to activities on this day and early hours on Sunday, 29 June was described below:

Time	Amount	No of staff	Explanation
6.17pm	€3.90	1	1 tea
7.11pm	€183.70	6	Evening meals and drinks
7.37pm	€42.40	1	Evening meal and drinks
2.05am (29/06/2014)	€36.00	2	4 x drinks

Merck Serono submitted that these expenses related purely to those of Merck Serono staff only.

#### Sunday, 29 June 2014

There were various Merck Serono meetings (for staff only) planned on this day. Some staff attended a training session on a medical technology at the International Convention Centre (ICC) from 12 noon to 3pm. The designated stand crew attended the 'Stand Crew Training' from 1.30-3.30pm at a nearby hotel and then returned to the hotel. The final meeting was a general briefing for all Merck Serono staff attending ESHRE (excluding those who attended the Stand Crew Training). These staff then went back to the hotel and gathered at the bar briefly

before departing to prepare for the planned dinner in the hotel restaurant with the invited delegates. At this time, a bar tab was opened by a named employee to cover the costs of staff only subsistence throughout the evening.

The next scheduled activity was the buffet dinner in the hotel restaurant which was the first planned interaction with any sponsored health professional delegates. Health professional delegates had arrived throughout the day and could attend the buffet dinner from 8pm. This was the only planned event for health professional delegates that day (Merck Serono referred to the delegate welcome letter previously submitted for health professionals' itinerary).

Merck Serono had previously submitted the master bills in relation to the planned hospitality for that evening. After dinner, some staff returned to the hotel bar where they remained until the bar tab was settled by a named employee around midnight (Merck Serono referred to the hotel invoice for the named employee dated 29 June 2014, €217.10). Merck Serono stated that whilst some health professional delegates were in the hotel bar and restaurant, no health professionals were involved or participated in the staff entertaining activities in the bar relating to this expense. Furthermore, no health providers were seated in the vicinity of the staff present in the hotel bar. Merck Serono listed staff who were present during this 4-5 hour period relating to the €217.10 expense claim [this list included a future employee who was to Merck Serono on 1 July 2014]. Additionally, throughout the evening, one employee bought three drinks for him/herself. As previously explained Merck Serono believed the times shown on the printouts provided by the hotel ideally did not accurately represent the time the order was settled at the bar. The receipts provided showed the time that the expenses were added to the hotel accounting system against each room.

A full account of expenses relating to activities on this day and the early hours of Monday, 30 June as described above were listed in the table below:

Time	Amount	No of staff	Explanation
5.51pm	€7.80	2	2 teas
6.48pm	€22.40	5	5 drinks
12.47am (30/06/2014)	€217.10	9	Drinks before and after dinner
12.53am (30/06/2014)	€3.90	1	1 tea
12.59am (30/06/2014)	€12.60	1	3 drinks before/ after dinner

There were no further planned or unplanned activities or events that evening.

#### Monday, 30 June 2014

The ESHRE main scientific programme started at 8.30am. All health professional delegates and staff travelled to and from the ICC by public transport.

The delegate welcome letter again showed that health professionals and staff were due to meet in the hotel lobby at 7.30pm before an organised coach transfer took them to dinner at a restaurant in central Munich. After dinner, all delegates (health professionals and staff) were taken back to the hotel by coach (approximately 10pm-11pm). There were no further planned or unplanned activities or events that evening and all delegates (health professionals and staff) were free upon arrival back to the hotel; some staff went to the bar for drinks but again, they did not buy any drinks for health professionals.

As previously explained, Merck Serono believed the times shown on the printouts provided by the hotel did not accurately represent the time the order was settled at the bar. The receipts provided showed the time that the expenses were added to the hotel accounting system against each room.

A full account of expenses relating to activities on this day and early hours of Tuesday, 1 July as described above were summarised in the table below:

Time	Amount	No of staff	Explanation
4.37pm	€39.90	1	Subsistence and drinks
2.35am (01/07/2014)	€14.00	2	2 drinks
2.37am (01/07/2014)	€14.00	1	2 drink after dinner
2.39am (01/07/2014)	€12.00	1	2 drinks and a snack purchased from mini bar in room
12.59am (30/06/2014)	€12.60	1	3 drinks before/ after dinner

There were no further planned or unplanned activities or events that evening.

### Tuesday, 1 July

Again, health professionals and staff travelled to and from the ESHRE conference by public transport. The planned evening hospitality was similar to the previous day. Staff and health professional delegates met at 7.30pm for transfers to a restaurant in central Munich before returning to the hotel. Again, no further planned or unplanned activities or events took place.

Full account of expenses relating to activities on this day and early hours of Wednesday, 2 July (described above):

Time	Amount	No of staff	Explanation
1.11am (02/07/2014)	€8.40	3	3 drinks

Merck Serono noted that the complainant did not provide any examples of what was considered inappropriate or unprofessional behaviour by any

member of staff during ESHRE 2014 and in that regard questioned the authenticity of this complaint. All staff that attended ESHRE had been interviewed and had confirmed that no inappropriate or unprofessional behaviour took place. Merck Serono referred to statements provided which acknowledged this fact.

### PANEL RULING

The Panel noted the complainant was anonymous. As stated in the introduction to the Constitution and Procedure, such complaints were accepted and like all complaints, judged on the evidence provided by both parties. Complainants had the burden of proving their complaint on the balance of probabilities; as the complainant was also non-contactable it was not possible to ask him/her for further information.

The Panel noted that Clause 19.1 required that companies must not provide hospitality to members of the health professions and appropriate administrative staff except in association with scientific meetings, promotional meetings, scientific congresses and other such meetings, and training. Meetings must be held in appropriate venues conducive to the main purpose of the event. Hospitality must be strictly limited to the main purpose of the event and must be secondary to the purpose of the meeting, ie subsistence only. The level of subsistence offered must be appropriate and not out of proportion to the occasion. The supplementary information to that clause noted, *inter alia*, that the impression created by the arrangements for any meeting must always be kept in mind.

The Panel noted that the provision of hospitality and other interactions between the pharmaceutical industry and health professionals outside the formal congress proceedings at international congresses was a subject that attracted much public scrutiny and criticism. Companies should be mindful of the impression given by such interactions and ensure that when applicable such activity complied with the UK Code.

The Panel noted the Merck Serono policy document 'Congresses/Meetings and Hospitality FAQ' reflected the requirements of Clause 19 (2014 Code) and stated, *inter alia*, that outside of subsistence provided in association with appropriate meetings 'it is not appropriate to go to the hotel bar or other venue and buy alcoholic drinks for customers'. The Panel accepted that company employees would want to wind down away from health professionals at the end of a full congress day. However, company employees were in the conference city as representatives of their company for business reasons and as such they must be mindful of the impression created by their behaviour beyond the formal conference proceedings and associated subsistence. This was especially so in a late night social environment.

The Panel noted the complainant's allegation that a named employee and Merck Serono staff, together with health professionals, drank alcohol into the

early hours of the morning at hotel restaurants and bars. No supporting evidence had been provided by the complainant. The Panel noted that it had been difficult to extract the relevant information from the material provided by Merck Serono. Consequently, the Panel had been obliged to ask the company for more information on several occasions. The Panel considered that its management of the case would have been greatly assisted if Merck Serono had provided a clear explanation of all expenses incurred at ESHRE and a comprehensive list of staff attendees at the outset.

The Panel noted that a buffet at the hotel restaurant where sponsored delegates were staying was provided on Sunday, 29 June at a cost of €60 per delegate. A set meal at an external restaurant was provided on Monday, 30 June at a cost of €55 per head. The company's responses and invoices did not quantify the amount of alcohol that was provided in relation to either event. In the absence of such information, the Panel considered that it was difficult to see how the arrangements could have been approved. On Tuesday, 1 July, dinner at an external restaurant included a beverage package which included two glasses of wine, one coffee and half a bottle of water at €22 per delegate. Whilst noting its comments above, the Panel considered that there was no evidence to indicate whether the consumption of alcohol at restaurants on 29 and 30 June was inconsistent with the Code. The complainant bore the burden of proof in this regard. Consumption on 1 July appeared to be consistent with the relevant requirements. The Panel ruled no breach of Clause 19.1 of the Code.

In relation to hotel bars, the Panel noted Merck Serono's submission that health professionals were taken back to the hotel after dinner where some might have remained in the bar, but if they did so, it was at their own account. The Panel noted that on each night, staff incurred bar expenses at the hotel bar. The Panel noted that according to Merck Serono, on Sunday, 29 June a bar tab for employee drinks (nine staff) for €217.10 was settled at around midnight. The Panel queried whether it was appropriate to choose the hotel bar for a late night staff drink given one could reasonably assume that health professionals staying at the hotel would also be present. The Panel noted Merck Serono's

submission that whilst health professionals were in the bar, they did not participate in the staff social activity nor were they seated nearby. The Panel queried whether this distinction would be clear to third parties or to those health professionals who had dined with the employees earlier that evening. The Panel had no information about the layout of the bar nor whether at the relevant times it was a quiet or noisy environment. Similar comments applied to Monday, 30 June and Tuesday, 1 July although the monies spent and numbers of employees involved were less. Whilst the Panel was concerned as outlined above it noted that the complainant bore the burden of proof. Taking all the circumstances into account the Panel noted that although Merck Serono employees had consumed alcohol in the hotel bar late at night, there was no evidence that they had bought drinks for any of the health professionals present or otherwise socialised with them as alleged and thus no breach of Clause 19.1 was ruled.

The Panel noted its rulings above and considered that there was no evidence that the conduct of the Merck Serono staff had created an inappropriate and unprofessional impression of the pharmaceutical industry or otherwise brought the industry into disrepute. No breach of Clauses 2 and 9.1 was ruled.

In relation to the allegation that the same health professionals were hosted year after year by Merck Serono and that the complainant had been told by his/her local sales representative that he/she did not prescribe enough Gonal-f to warrant an invitation to attend ESHRE with Merck Serono, the Panel noted emails from all relevant Merck Serono sales representatives which stated that none of them had ever had such a discussion with any of their health professionals. The Panel considered that on the information before it there was no evidence that a sales representative had stated to the complainant that only good prescribers of Gonal-f would be sponsored to attend. No breach of Clauses 18.1, 9.1 and 2 was ruled.

**Complaint received**                      **9 September 2014**

**Case completed**                              **14 January 2015**