ZIGNAGO VETRO

ANTITRUST CODE OF CONDUCT

ZIGNAGO VETRO S.P.A.

Approved by the Board of Directors
of Zignago Vetro S.p.A. on April 29, 2024

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1. INTRODUCTION

Zignago Vetro S.p.A. (the "**Company**" or "**Zignago Vetro**") is the operating holding company of the group of companies of the same name (the "**Zignago Vetro Group**"). The Zignago Vetro Group is one of the leading players in glass packaging, with a consolidated presence in products for the food, cosmetics and perfumery sectors. The Zignago Vetro Group's vision is guided by its desire to stand out because of the quality of products and services it offers its customers, with a focus on innovation, creativity, flexibility and reliability.

The Zignago Vetro Group's activities have always been based around compliance with applicable regulations and best practices in the areas of product quality, work safety, and environmental protection, along with values and rights such as, among others, transparency in internal and external relations, ethical corporate conduct, sustainability, freedom of association and the right to collective bargaining, and anti-corruption.

Zignago Vetro firmly believes that a competitive market benefits both businesses and consumers. This is confirmed by the Company's Code of Ethics, which states that the Company "*subscribes to and intends to safeguard the value of fair competition and intellectual property, rejecting any conduct that is contrary to this principle*".

This Antitrust Code of Conduct (the "**Antitrust Code**"), in accordance with the wishes of Zignago Vetro's management, therefore constitutes the full expression of the corporate culture and principles that have always been at the heart of the Company's activities. It also forms part of a broader antitrust compliance programme (the "**Antitrust Compliance Programme**").

The Antitrust Compliance Programme as a whole is inspired, first and foremost, by the Guidelines on Antitrust Compliance adopted by the Italian Antitrust Authority ("**AGCM**") in Order No. 27356 of September 25, 2018, and the best practices of the European Commission ("**Commission**") and the guidelines codified by Confindustria.

By adopting this Antitrust Code, Zignago Vetro seeks to reiterate the importance of continuing to spread the Company's values and culture among its employees and executives and to its subsidiaries. These values are based on the utmost respect for competition rules and every regulation applicable to the Company's operations.

Fundamental objectives of the Antitrust Code

1. To explain the foundational principles of and the main regulations protecting competition, both at the national and EU level, to all Company personnel.
2. To raise awareness of the importance of acting in accordance with national and EU competition protection regulations.
3. To investigate and prevent conduct that could potentially be in breach of competition protection regulations.
4. To identify the areas of the Company's business at the greatest risk of incurring antitrust violations.
5. To provide guidelines and internal procedures so as to properly handle risk situations.
6. To explain the role of the Antitrust Compliance Officer in the context of the Antitrust Compliance Programme, giving specific examples of instances when employees must refer to him/her.
7. To constitute a readily available handbook that is available to every company employee.
8. To ensure compliance with competition regulations, reducing risks from antitrust violations.

1.1. THE ANTITRUST COMPLIANCE PROGRAMME

The Antitrust Code is part of the broader Antitrust Compliance Programme adopted by Zignago Vetro. Specifically, in enacting the Antitrust Compliance Programme:

(i) risk mapping activities were carried out to identify the main activities carried out by Zignago Vetro and the potential antitrust risks related to them. These were taken into account in the preparation of the Antitrust Code;

(ii) this Antitrust Code was prepared. It was approved by the Board of Directors of Zignago Vetro on April 29, 2024 - when the Antitrust Compliance Programme Manager ("**Antitrust Compliance Officer**") was also appointed - and promptly disseminated to all Executives, members of corporate bodies, employees and contractors;

(iii) appropriate training programmes were prepared and training programmes were conducted for all personnel. These will be repeated every two years.

Zignago Vetro is committed to periodically reviewing compliance with the Antitrust Code and the overall functioning of the Antitrust Compliance Programme. In addition, this Antitrust Code will be regularly reviewed and updated to incorporate the principles and guidelines arising from regulatory and jurisprudential developments in the field and to ensure that the Company remains compliant.

1.1.1. Periodic audit of the functioning of the Antitrust Compliance Programme by external legal counsel

Following the adoption of the Antitrust Compliance Programme, Zignago Vetro will conduct a periodic **Audit** of the operations carried out by the Company in order to ascertain full compliance with the rules protecting competition, in addition to the continued relevance of the risk areas identified.

The Audit will have two objectives:

- to monitor and verify the efficacy of the Antitrust Compliance Programme and ensure that it is properly implemented by the Company's management and employees;
- to identify the main risk areas in relation to company activities.

The Audit shall be carried out by external legal counsel with experience in competition law and will involve:

(i) a thorough review of the Company's internal documentation, including Annual Reports (as defined in 1.1.2. below);

(ii) interviews with managers and employees; and

(iii) a seminar for company employees to raise staff awareness and train and update them on key antitrust issues.

The external legal counsel shall report to the Board of Directors and the Company's senior figures on the results of the Audit, suggesting best practices to be encouraged and providing any guidance that may be appropriate to further improve procedures, the Antitrust Code and the training of Company employees, and to minimise any potential risk areas identified.

Except where otherwise specified by the Antitrust Compliance Officer, the Audi as described above shall be carried out by external legal counsel every two years.

1.1.2. Reporting by the Antitrust Compliance Officer

The Antitrust Compliance Officer shall report directly to the **Corporate Director, Corporate Affairs and Investor Relations of the Group** and shall have full autonomy and independence in performing their duties. The Antitrust Compliance Officer may not be subject to any disciplinary measures for activities carried out in compliance with the Antitrust Code.

The Antitrust Compliance Officer shall prepare an annual report on the functioning of the Antitrust Compliance Programme, outlining the reports received, the audits conducted, the critical issues identified, the action taken, and the training events organised as part of the Antitrust Compliance Programme (the "**Annual Report**").

The Annual Report shall be shared directly with the **Corporate Director, Corporate Affairs and Investor Relations of the Group** and shall also be sent to the Company's Board of Directors.

The Antitrust Compliance Officer shall conduct periodic audits to assess the Company's potential risk areas and, where necessary, suggest amendments to the Antitrust Code to the **Corporate Director, Corporate Affairs and Investor Relations of the Group**. The content and outcome of these audits, along with any amendments to be made to the Antitrust Code, shall be detailed in the Annual Report.

The Antitrust Compliance Officer may report to the **Corporate Director, Corporate Affairs and Investor Relations of the Group** and, where it is considered appropriate, to the Board of Directors, on his/her activities in enacting and monitoring the Antitrust Compliance Programme, whenever s/he deems it appropriate and including on occasions other than those described above. The Annual Report shall include appropriate evidence of these reporting activities.

1.1.3. Internal control mechanisms

Where there are doubts regarding the compliance of particular conduct with the rules protecting competition, the Company's management, employees and contractors should contact the Antitrust Compliance Officer, who, if necessary, may in turn consult the Company's (internal/external) legal counsel.

By way of example - and as further detailed in subsequent sections of this Antitrust Code - the following are circumstances in which the Antitrust Compliance Officer should be contacted:

(i) Before attending a meeting that will involve competitors (e.g. in a trade association);

(ii) Before concluding contracts and agreements with a value above Euro 500,000, either with competitors or with suppliers and distributors;

(iii) Where unsolicited, commercially sensitive data or information is received from competitors, distributors, or customers. More details are provided in **Section 3** of this Antitrust Code.

(iv) In the event of participation in joint ventures with competitors. More details are provided in **Section 3** of this Antitrust Code (see pages 19 and 20 in particular).

(v) Where the Company holds a dominant position in a given market: before applying downward or upward pricing policies; before applying loyalty discounts; before "tying" the sale of certain products; before refusing to supply a customer or engaging in discriminatory treatment. More details are provided in **Section 4** of this Antitrust Code.

(vi) In the event of **surprise inspections**. More details are provided in **Section 6** of this Antitrust Code.

Management and employees in senior positions shall also be required to take appropriate measures to ensure that (i) activities under their supervision are conducted in accordance with legal provisions, internal regulations and the Antitrust Code, and that (ii) employees under their coordination comply with their obligations under the Antitrust Code.

1.1.4. The Company's staff training

Ongoing training is one of the essential elements of the Antitrust Compliance Programme. It seeks to create a common antitrust culture, promote correct perception of risks in the event of a violation, and increase individual employee accountability to ensure compliance with the rules protecting competition.

As such, the Company will organise specific antitrust training events for employees in senior positions and for personnel operating in "at risk" areas generally. Similar training meetings will also be offered to any newly hired employee who will work in the aforementioned areas.

The Company will organise an annual training and refresher seminar for employees. Attendance at each training event will be mandatory and will be certified by the Company. Following each training event, participants will take a test to verify that they have effectively understood the training material. Participating in the training and passing the final examination will be considered positively by the Company as part of each employee's overall evaluation.

1.2. ADDRESSEES OF THE ANTITRUST CODE

The Antitrust Code is binding for the Executives and employees of Zignago Vetro, and particularly those who, as a result of the positions they hold and the activities they perform, most frequently encounter potentially problematic situations. All those subjects mentioned above must, therefore, comply scrupulously with the rules and procedures herein.

The belief that one is acting for the benefit of the Company may in no way justify behaviour that violates the rules of conduct and principles contained in this Antitrust Code.

1.3. COMPLIANCE WITH THE ANTITRUST CODE AND REPORTING

Failure to comply with the provisions of the Antitrust Code constitutes a breach of duty of care and a disciplinary offence. Compliance with this Antitrust Code - including training attendance - is to be considered an essential part of company employees' contractual obligations pursuant to and in accordance with Article 2104 of the Civil Code.

As such, where a violation of the Antitrust Code is ascertained, the Company, acting in full compliance with national collective bargaining agreements and applicable laws, may apply disciplinary sanctions or take any further action required to protect its interests.

Zignago Vetro will sanction the individuals responsible for any violations of this Antitrust Code, in an amount proportional to the severity and nature of the violation ascertained.

Sanctions will be imposed only after consulting with the Antitrust Compliance Officer, and employees shall be given the opportunity to respond. Any aggravating and/or mitigating circumstances relating to the offence will be taken into consideration when determining the penalty.

It is important that every company manager or employee reports, including anonymously, any violation (or alleged violation) of antitrust law or the Antitrust Code of which s/he becomes aware. The report must be made through the reporting channels provided under Section 5.3 of Zignago Vetro's Whistleblowing Policy, as most recently updated on November 7, 2023, in compliance with the provisions of Legislative Decree No. 24/2023 ("**Whistleblowing Policy**").

The procedures to report and verify violations set out in the Whistleblowing Policy feature maximum protection for privacy and confidentiality and are referred to below.

By adopting its Whistleblowing Policy, Zignago Vetro has established dedicated channels to report any violations of European and national regulations (including antitrust regulations)

Any reports received by the Whistleblowing Management Committee ("**WMC**"), as defined under Section 4 of the Whistleblowing Policy, through the reporting channels provided for under Section 5.3 of the Whistleblowing Policy (and referred to below) shall be managed in collaboration with

the Antitrust Compliance Officer, who will conduct the relevant analysis and initiate and carry out the necessary reviews.

Reports must be made in good faith, be well-founded or at least based on factual evidence, and be as fully circumstantiated as possible, to allow those responsible for receiving and handling them to ascertain the facts.

Reports may be submitted through the following channels:

- **in written form**:
    a) **by regular post** according to the method described in Section 5.3.1 of the Whistleblowing Policy.
    b) **by computer**, by directly accessing the specific **platform** available on the homepage of the Company's website www.zignagovetro.com using the following link: https://zignagovetro.segnalazioni.net;
- **verbally**, according to the method described in Section 5.3.1 of the Whistleblowing Policy.

The specific digital platform, available on the homepage of the Company's website, is the priority channel.

The methods and instructions for sending a report through the digital platform are set out in Section 5.3 of the Whistleblowing Policy.

Anonymous reports are handled according to the method described in Section 5.2.3 of the Whistleblowing Policy.

Where a report related to antitrust issues is received:

- The WMC shall forward it to the Antitrust Compliance Officer;
- The Antitrust Compliance Officer, after verifying that it is not manifestly unfounded, carries out the appropriate checks in consultation with the **Corporate Director, Corporate Affairs and Investor Relations of the Group**.
- Following these checks, the Antitrust Compliance Officer shall prepare a report to be shared with the **Corporate Director, Corporate Affairs and Investor Relations of the Group**.

The Antitrust Compliance Officer shall keep track of all reports received and the checks carried out to ascertain the merits of the reports.

Where the investigations carried out by the Antitrust Compliance Officer confirm the merits of a report or otherwise the possibility of risk areas, the Company's management shall positively consider the contribution made by the non-anonymous reporter in their overall evaluation.

No employee may be penalised, in any way, for reporting a possible violation of the Antitrust Code and/or antitrust law to the Antitrust Compliance Officer.

2. EUROPEAN AND NATIONAL REGULATIONS TO PROTECT COMPETITION

Antitrust law regulates the companies'[1] behaviour in the conduct of their business. Specifically, antitrust law prohibits companies from engaging in **anticompetitive agreements** and **abusing their market power** to the detriment of other companies and/or consumers.

National and EU competition protection provisions contain essentially similar principles and rules, with differences almost exclusively found in the areas of territorial application: the European rules cover anticompetitive conduct that may affect trade between EU member states, while Italian rules affect conduct likely to distort competition mainly within the nation.

This section sets out the main European and national provisions on:

- **anticompetitive agreements** (i.e., Article 101 of the Treaty on the Functioning of the European Union ["**TFEU**"] and Article 2 of Law No. 287/90 ["**Law 287/90**"]); and
- **abuse of dominant position** (i.e., Article 102 of the **TFEU** and Article 3 of Law 287/90.

These provisions play a fundamental role in regulating companies' activities. Violation of these rules can, in fact, expose companies to significant administrative penalties, in addition to convictions for damages caused by the antitrust violation.

More specifically, antitrust violations may lead to proceedings brought either by competition authorities - which can order the cessation of anticompetitive conduct and impose administrative sanctions ("public enforcement") - or by businesses and consumers who are victims of the conduct in question. Such parties can bring civil actions in civil courts to seek the cessation of the conduct and obtain compensation for any damages suffered ("private enforcement").

2.1. ANTITRUST AUTHORITIES

Antitrust enforcement is entrusted in the first instance,

- at the European level, to the Commission's Directorate-General for Competition and,
- at national level, to the AGCM.

Antitrust authorities have broad investigative powers and can begin investigative proceedings, including on their own initiative, in order to ascertain anticompetitive conduct.

The main source of information for antitrust authorities is complaints/reports from competing companies and/or consumers and consumer associations. The Commission and the AGCM have adopted **whistleblowing tools and platforms**, which allow reports to be sent and subsequently managed by the authorities in a completely anonymous and confidential form (see

[1] For the purposes of antitrust, **company** is taken to mean any entity engaged in independent economic activity, and the notion of a company identifies the economic group to which the entity in question belongs. Therefore, agreements between entities in the same Group are not relevant under Article 101 TFEU or Article 2 of Law 287/90.

https://competition-policy.ec.europa.eu/index/whistleblower_en?prefLang=it e https://wbagcm.integrityline.com/).

Anticompetitive agreements between companies operating at the same level of the supply chain (i.e. cartels) may also be reported by one of the companies involved in the illegal conduct, in an effort to obtain **full or partial immunity from the financial penalty** (under the "**leniency programme**" adopted by the antitrust authorities).

During investigations, antitrust authorities have wide-ranging powers, both in dealings with private individuals and government agencies. In particular, they can:

- request information and order that documents relevant to the proceedings are provided;
- order inspections ("dawn raids"), including unannounced inspections, at the premises of suspected companies and "of anyone believed to be in possession of company documents that may aid the investigation", making use of law enforcement (i.e. the Finance Police) where appropriate;
- call the companies involved to give evidence at a hearing.

Providing false or partial information to antitrust authorities or obstructing an inspection may result in the imposition of significant penalties - up to 1% of turnover generated worldwide in the last fiscal year by the Group as a whole.

It is the Company's policy to cooperate fully with antitrust authorities.

2.2. POSSIBLE CONSEQUENCES OF ANTITRUST VIOLATIONS

Antitrust violations can lead to serious consequences for both the company involved and the individual employees who played an active role in carrying out the anticompetitive conduct.

First, if the antitrust authority finds that the company's behaviour constitutes prohibited conduct, it may order, through its own measure adopted following the investigation, the elimination of the violation detected. It may also order the adoption of any behavioural or structural remedy it deems proportionate and necessary to definitively end the infringement and its effects.

Secondly, competition authorities may order administrative fines of up to **up to 10% of the worldwide turnover generated in the last fiscal year by the entire Group** to which the company involved in the proceedings belongs. Specifically, the **size of the fine** is determined - either by the AGCM or the Commission - based on the criteria set out in the Commission's "*Guidelines for the Calculation of Fines*" and the AGCM's "*Guidelines on the Applying the Criteria to Quantify Administrative Fines*".

Thirdly, the consequences of antitrust authorities' identification of antitrust violations are not limited to fines or orders to cease the prohibited conduct. In fact:

- agreements made in violation of antitrust regulations are **void** and as such, **compliance with them cannot be demanded**;
- customers and competitors may sue, in civil court ("private enforcement"), the company involved, which could be forced to **compensate them for the damage caused**;
- the **company's reputation could consequently be ruined**, with obvious risks in terms of share value on the regulated markets where it is listed, and relating to the company's business profitability more generally;
- employees involved could face **disciplinary sanctions** imposed by the company;
- some countries even provide for the imposition of criminal penalties for those involved in violations of competition law (this is not, however, the case in Italy).

Lastly, in cases where a parent company controls or exerts decisive influence (understood as the power to affect strategic choices) over the company committing the antitrust violation, the Commission or the AGCM may hold the parent company responsible for the breach and extend the investigation to it.

3. ARRANGEMENTS

3.1. INTRODUCTION AND FUNDAMENTAL PRINCIPLES

In the various jurisdictions with antitrust legislation, there is broad agreement in condemning restrictive agreements, especially in cases where these take the form of secret cartels. This is because antitrust law is designed to ensure that companies compete fairly with each other, to the ultimate benefit of consumers. Each operator must therefore determine its business conduct on the market **independently** and **exclusively on the basis of its own strategic choices**.

An anticompetitive agreement may exist between two or more competing companies[2] ("**horizontal agreement**") or between companies at different levels of a product value chain, such as a manufacturer and a distributor ("**vertical agreement**").

More specifically, Article 101 of the TFEU and Article 2 of Law 287/90 prohibit **agreements between undertakings**, **concerted practices** or **decisions by business associations** which seek to or actually prevent, restrict or distort competition.

Under the above provisions, the following are therefore prohibited:

1) **anticompetitive agreements between companies**.

   The definition of "agreement" includes all and any case in which two or more companies reach a consensus, even in principle, about behaviour (whether active or omissive) to be conducted on the market.

   The form in which the agreement is reached is irrelevant: in addition to agreements made in **writing**, the following are also relevant for antitrust purposes:

   (i) agreements made informally, including by employees without the power to bind the company (e.g. at a trade association meeting, at the coffee shop, as part of a brief phone call; via exchange of messages or via *WhatsApp*);

   (ii) "gentlemen's agreements";

   (iii) agreements that do not impose specific obligations on the parties;

   (iv) various types of collaboration between competing companies.

[2] For antitrust purposes, the notion of **competitors** depends on the definition of product and geographic markets provided by competition authorities for the specific area affected by the cartel. In general terms, actual or potential competitors are those companies that:

- provide similar products or services in the same geographical areas;
- may provide similar products or services to the same customers; and
- purchase similar goods or services from the same suppliers.

It should be noted that if the cartel has an anticompetitive purpose, a violation of the provisions under consideration may exist **even if the agreement was never complied with or implemented or otherwise had no impact on the market**.

2) **concerted practice**.

The definition of concerted practice includes all forms of coordination which, while not going so far as to constitute an actual agreement, represent conscious cooperation between companies, to the detriment of competition. A classic example of a concerted practice is the exchange of commercially sensitive information between competitors through third parties such as customers or joint suppliers[3].

The essential elements of concerted practice are generally:

(i) the existence of some form - whether direct or indirect - of "contact" between the companies, which would provide them with information (or at least reduce uncertainty) about their respective business strategies; and

(ii) a potential impact of this circumstance on the conduct of the companies involved, which could consider the information obtained when making business decisions.

Concerted practices are often substantiated by the AGCM or the Commission using circumstantial evidence, such as a combination of unusual and anomalous circumstances identified in the markets under investigation or the substantial and gradual alignment of prices between competitors despite a differing cost structure.

3) **decisions of business associations**.

This category includes all resolutions, including non-binding ones, taken by business associations or entities that seek to influence the business conduct of affiliated companies or affect competition.

Antitrust regulations do not prohibit companies from participating in meetings with their competitors organised by trade associations. However, the resolutions adopted and the interactions that take place in such contexts, along with the information about members circulated by the aforementioned associations, must not induce or enable said associations to

[3] The difference between agreement and concerted practice is sometimes subtle. For example, in the recent case I858 - *Municipality of Livigno/automotive fuel prices* (2023), the AGCM established the existence of an understanding between the various operators owning the twelve petrol stations in the Livigno area, expressed in explicit price concertation and demonstrated by systematic e-mail exchanges between the head of the tax office of the Municipality of Livigno and the fuel distribution companies. In these e-mails, the municipal employee indicated to the recipients the prices to be charged for fuel sales in the area on a weekly basis. According to the AGCM, the cartel in question was as much a case of an illicit agreement as of concerted practice: "*the fact that the communications contained instructions regarding future prices and the date they were to take effect - instructions which were, moreover, on the basis of all available factual evidence, accurately followed - to a shared list of recipients demonstrates that this case included the constituent elements of an agreement and/or concerted practice"*.

coordinate their behaviour on the market, for example in terms of coordinating prices or discounts to be offered to customers[4].

European regulations also provide for the possibility of considering that certain agreements generate beneficial effects on competition, and certain "block exemptions", i.e. exemptions applicable - under certain conditions - to entire categories of agreements.

3.2. HORIZONTAL ARRANGEMENTS

Horizontal agreements involve companies operating at the same level of the production or distribution process and generally competing with each other.

This section will examine the main types of horizontal arrangement.

3.2.1. Cartels

Cartels are agreements that **seek to restrict competition** and therefore constitute extremely serious violations of the rules protecting competition ("hard-core").

Given the particular seriousness of this conduct, Article 101 TFEU or Article 2 of Law 287/90 are violated even if the cartel has no effect on the relevant market.

The forms of horizontal arrangements deemed most harmful to competition are:

- **The fixing of prices (or components of prices) or terms of sale** (e.g. size of discounts offered).
- **The limitation of production**. Agreements to raise prices above competitive levels by reducing quantities produced ("output restriction") or types of products offered are prohibited.
- **Market compartmentalisation or customer partitioning**. These are agreements between competitors designed to circumscribe each's areas of operation or allocate customers.
- **Boycott of "dangerous" competitors**.
- **Collusion between competitors when participating in tenders or selective procedures** (e.g. bid coordination).

[4] For example, in Case I701 - *Retailing of Cosmetic Products* (2010), the AGCM identified a cartel between companies engaged in the production and sale of cosmetic products relating to the exchange of information on product prices, increases to be applied and negotiating conditions with large-scale retail operators. In this case, the AGCM noted that the exchange of information took place at trade association meetings, during which the association had provided participating companies with the results of some studies ("observatories") conducted using data provided by members and pertaining to the relationships between producers and large-scale retail operators.

Where there exists the suspicion - for any reason - that the Company is involved in any of the above forms of horizontal arrangement, the Antitrust Compliance Officer must be promptly contacted.

Considering the seriousness, from an antitrust point of view, of conduct falling under the definition of cartel and the usual secrecy around such conduct, since 2006 the national legislature - in line with the provisions at the EU level and in other jurisdictions such as the United States - has provided for **leniency programmes**, which are regulated by Articles 15-*bis* and subsequent of Law 287/90.

Through these leniency programmes, AGCM "rewards" - by not imposing penalties or by applying substantial reductions to penalties - those companies that are members of cartels and which voluntarily provide information or documentary evidence regarding the existence of a cartel.

In order to qualify for immunity, the company must:

- promptly **report** violations (immunity from sanctions is not available if the AGCM already has sufficient evidence and documents to prove the existence of the violation in question);
- **provide information and evidence that is decisive** in establishing the violation, or which otherwise enables the AGCM to conduct a targeted inspection to acquire the evidence;
- assure the AGCM of full and continuous **collaboration**;
- **cease to participate in the violation**, without informing the other participants in the arrangement;
- **not have forced other companies to participate in the cartel**.

The Authority also values the cooperation of companies that are not the first to report the cartel, creating a "ranking" of the penalty discount related to the time that the leniency application is submitted.

In concrete terms, a company wishing to benefit from the leniency programme must submit an application, accompanied by the relevant information and documents, to the AGCM. Interested companies can contact the AGCM in advance, even anonymously, for clarification through a hotline**(06/85821.872**).

3.2.2. Exchange of information

The exchange of information between competitors may also constitute a **violation of antitrust regulations** if it relates to **commercially sensitive information** (and even where there is no evidence of an agreement between the parties).

Commercially sensitive information includes all information, which, if commonly available, would make it possible to **predict competitors' commercial policy and alter competitive dynamics**.

By way of example only, commercially sensitive information is typically considered to include:

- sales prices, margins, price increases or discounts, other trading conditions applied or to be applied, and production volumes,
- marketing and distribution methods, promotional campaigns and other business strategies;
- production costs and sources of supply;
- development areas and commercial or production investment strategies.

As described anticipated above, each operator must **independently** determine the commercial conduct it intends to adopt on the market, **solely on the basis of its own strategic choices**, which must not be communicated to competitors.

The exchange of business information is particularly dangerous when it is **frequent** and involves information that is **recent or future and individualised**. **Receipt of a single communication from a competitor, even where unsolicited, is sufficient to expose the company to serious antitrust risks**. Moreover, the exchange of sensitive information, where accompanied by similar conduct between competitors, could indicate the existence of an illicit agreement.

The exchange of information may also take place **via a third party** (e.g. a consulting firm, a trade association), which collects commercially sensitive information from various competing parties and redistributes it to them after reprocessing it in aggregate. Where the level of aggregation of redistributed data is such that it is possible to **trace it back to the individual, disaggregated data** of each operator, the exchange could present antitrust issues.

Particular attention should be paid if Company participates in **joint ventures with competitors**. These situations present antitrust risk because they can lead to exchanges of sensitive **information** among the companies holding interests in the joint venture.

To minimise risk in these cases, **it is advisable to introduce appropriate internal procedures** ("firewalls") to prevent competitors from using the joint venture as a means of exchanging sensitive information, other than and in addition to that necessary to carry out the joint venture's activities. This is also true where the Company and the joint venture are competitors.

In such instances, internal organisational measures should also be taken to avoid sensitive information being exchanged through senior management and the respective members of Boards of Directors (e.g. non-participation in discussions pertaining to antitrust-sensitive information and/or decisions on business strategies pertaining to areas where companies are competitors).

3.2.3. Trade associations

Attendance of Company managers or employees at trade association meetings (as occasions where competitors meet) may, in some cases, be particularly problematic from an antitrust point of view, especially if the Company manager or employee holds a management position within the association.

Where a company employee **participates, including passively**, in a meeting with competitors where sensitive information is exchanged:

- The antitrust compliance officer must be notified **in advance** of the **agenda and the names of the participants**.
- The Antitrust Compliance Officer must verify that employees attending the meeting are familiar with the internal compliance regulations and should provide **guidance on conduct at the meeting**. S/he may also attend meetings as appropriate.
- The **minutes of the meeting** must be sent to the Antitrust Compliance Officer.

Specifically, if a trade association meeting or any meeting between competitors leads to commercially sensitive matters being discussed, strategies formulated or initiatives taken that are even potentially in violation of antitrust law or the rules contained in this Code, it will be necessary:

- **To leave the discussions immediately and note their inappropriateness**. Inappropriate discussions between competitors should not be witnessed, even passively.
- **To immediately leave the meeting**, ensuring that this dissent and departure are recorded in the meeting minutes.
- If it is not possible to register dissent immediately, consult the Antitrust Compliance Officer and subsequently legal counsel in order to take all necessary actions to **make the departure** from the "suspicious" conduct **explicit** to all participants in the meeting (e.g. by sending an e-mail).

3.2.4. Cooperation agreements

Horizontal cooperation agreements are arrangements that are not inherently anti-competitive as they usually constitute a form of cooperation which is not designed to restrict competition, but, for example, to develop joint research and development projects, purchase goods or raw materials, share expertise, increase product quality and variety, develop new processes and technologies, etc.

In the **Company's business sector and operating environment**, cooperation agreements may, for example, relate to the joint purchase of raw materials, management of logistics or transportation activities, and the production or marketing of glass.

However, this type of agreement between competitors presents **serious antitrust risk** because the parties could exploit the cooperative agreement to set price or output limits, or to maintain, gain or increase their market power.

As such, any initiatives regarding cooperation agreements must be preceded by a **careful examination of the risk for the Company**, which can only be carried out by legal counsel experienced in competition law.

Should the Company decide to enter into a cooperation agreement, where preliminary meetings (either in person or virtual) between representatives of the participating companies are necessary, it is advisable that **the antitrust compliance officer of the Company take part in them**.

3.3. RULES OF CONDUCT - HORIZONTAL ARRANGEMENTS

Any contact with competitors represents a serious risk area for the Company, and should therefore be handled with the **utmost caution**.

To minimise risk for the Company, certain **general rules of conduct** must therefore be followed:

- **No company manager or employee shall contact, take any initiatives or exchange sensitive information with a competitor without first consulting the Antitrust Compliance Officer**. The following are examples of sensitive information that should not be exchanged with competitors:
  - Prices for customers;
  - Customer lists;
  - Procurement or raw material costs;
  - Costs of production;
  - Payment terms;

- Profit margins;
- Sales volumes;
- Remuneration of senior management.
- Current or future market strategies.

- Always pay close attention to any direct or indirect contact with competitors, **in any environment or context and in relation to any commercially sensitive topic**.
- Submit for the Antitrust Compliance Officer's prior review (i) any commercially sensitive data sent to third parties also assigned to collect similar data from the Company's competitors and reprocess that data, and (ii) the aggregate reprocessing of the data provided by the third party.
- Submit for the **Antitrust Compliance Officer's prior assessment** any contract/agreement with a competitor worth more than Euro 500,000 (or amendment to an existing contract/agreement) and do not sign any binding commitment (either in relation to the entire agreement or to an individual clause) before obtaining the positive assessment of the Antitrust Compliance Officer.
- Pay close attention to **any exchange of information with competitors (including indirectly via distributors or customers**) and do not request or accept sensitive information regarding the Company's competitors. Should the Company **receive potentially sensitive information from a competitor (or customer or distributor)** through its managers and employees and Directors or associates, it must:
  - immediately contact the Antitrust Compliance Officer and, where necessary, the Company's legal counsel and report the incident;
  - return the communication to the sender, specifying that it was not requested;
  - do not disclose any sensitive information regarding the Society in any case;
  - do not in any way consider the information received when making business decisions;
  - where the information received must be filed or forwarded to other employees of the Company, the context in which the communication was received must be specified in each case;
  - clarify that the information in question was not requested and that in any case it will not in any way shape business conduct.

What not to do:

- Exchange sensitive information with a competitor (see the list on the previous page).

- Discuss the Company's business or pricing strategies and policy with a competitor.
- Discuss the Company's business policy in a specific geographic area or in relation to a specific customer with a competitor.
- Agree with a competitor on timelines to introduce a new production process or machinery.
- Agree with a competitor to boycott another competitor, customer or supplier.
- Agree with a competitor not to supply a customer in exchange for the competitor agreeing not to bid on customers served by the Company.
- Agree with a competitor on measures to be introduced to prevent a new entrant joining the market.

3.4. VERTICAL ARRANGEMENTS

Vertical agreements occur between operators at different levels of the production process (e.g. between a manufacturer and a distributor of a given product; between a wholesale distributor and retailers in a given area).

Antitrust regulations prohibit companies from entering into anticompetitive vertical agreements, though such agreements are generally treated more favourably than horizontal agreements because they can create efficiency benefits due to synergies and complementarities between the participating companies.

On the basis of Regulation (EU) no. 720/2022 (which recently updated Regulation (EU) no. 330/2010), in fact, agreements relating to the acquisition and resale of goods and services **are not considered to restrict competition** when the companies concerned hold **less than 30%** market shares in the vertically related markets in which they respectively operate.

However, this exemption does not apply if vertical agreements contain certain "hardcore" restrictions, which include:

- **Agreements on resale price fixing**. Manufacturers are prohibited from imposing a minimum or fixed resale price on its distributors for its products, or from applying discounts, either directly (e.g. through contractual provisions) or indirectly (e.g. through discounts or incentives to distributors who comply with the resale price). Manufacturers are not, however, prohibited from recommending the resale price.

- **Agreements that include territorial or customer restrictions**. Manufacturers are prohibited from requiring that its distributors sell products exclusively in certain territorial areas or to certain types of customers. On the other hand, provisions that prevent distributors from reselling products outside the European Union, or which require that distributors conduct their business in a specific place of establishment ("location clauses"), are considered legal under certain conditions. Such agreements generally include resale price fixing, a ban on passive sales or the grant of absolute territorial protection.

- **Agreements prohibiting online sales**. Manufacturers are prohibited from unjustifiably restricting the distributors' freedom to sell products purchased through online channels. Contract terms and conditions that vary depending on whether the products are sold through different channels, i.e. online or through physical outlets, are also prohibited.

3.5. RULES OF CONDUCT - VERTICAL ARRANGEMENTS

Contact with customers and suppliers may in some cases also present antitrust risks to the Company and should therefore be handled with **caution**.

To minimise risk for the Company, it will therefore be necessary:

- To submit for the **Antitrust Compliance Officer's prior assessment** any distribution/resale contract/agreement with a customer (or amendment to an existing contract/agreement) worth more than Euro 500,000 and to not sign any binding commitment (either in relation to the entire agreement or to an individual clause) before obtaining the positive assessment of the Antitrust Compliance Officer.

- To not provide for any **restriction on resale pricing** by customers (e.g. wholesalers) or in general to customers' resale powers before obtaining the positive assessment of the Antitrust Compliance Officer.

4. ABUSE OF DOMINANT POSITION

National and EU competition protection rules require that companies with market power do not abuse it.

4.1. WHAT IS MEANT BY "DOMINANT POSITION"

Under antitrust law, a company holds a **dominant position** when it has significant power in a given market and can therefore behave independently of customers, competitors and/or suppliers. In fact, dominant position is defined as a position of economic strength that **enables a company to act independently of its competitors and customers**.

A company that is in a dominant position in a given market must take care not to abuse it and has a special obligation to act properly and responsibly. National and EU competition protection rules do not prohibit companies from holding a dominant position, but rather require that companies with market power do not abuse it to the detriment of competitors and/or customers. Even behaviour generally considered lawful could constitute abuse if carried out by a dominant company.

As such, it is important that the Company knows the markets in which it operates and its position in them.

4.2. DEFINITION OF "MARKET"

To determine whether a company holds a dominant position, it is first necessary to identify the particular market in which it operates. This operation entails two key questions:

- What is the relevant market in terms of the **product**?
- What is **the geographical range of the market**?

4.2.1. The relevant product market

Both the AGCM and the Commission have traditionally segmented the **glass container production market** based on (i) the intended use of the product and (ii) the type of glass produced[5].

In terms of intended use, the case history identifies two separate markets: (a) the market for the production of hollow glass (pressed or blown) for domestic use, pertaining to the area of "household goods" (i.e, glasses, cups, vases, etc.); and (b) the market for the production of hollow glass for industrial use, used to package industrial products[6].

[5] *Ex multis*, Case C12597 - *Vetri Speciali/Generalvetri* (2024); Case C10973 - *Owens Illinois/Verrerie Du Languedoc* (2011); Case M.6025 - *Ardagh/ Impress* (2010); Case C10103 - *O-I Manufacturing Italy-Zignago Vetro/Vetri Speciali* (2009); Case C6242 - *Bormioli Finanziaria/Bormioli Rocco & Figlio* (2004).
[6] *Ex multis*, Case C12597 - *Vetri Speciali/Generalvetri* (2024); Case C10973 - *Owens Illinois/Verrerie Du Languedoc* (2011).

In some precedents[7], the AGCM further speculated on a possible segmentation of the market for hollow glass for industrial use based on the particular type of product. Product types included, but were not limited to, bottleware and flasks (bottles), wide-mouth containers (jars), and bottleware for the pharmaceutical, cosmetics and perfumery industries.

As for the segmentation of the hollow glass production market based on glass type, in some precedents the AGCM distinguished between (a) the market for standard hollow glass products, with standardised shapes and sizes, and (b) the market for special/non-standard hollow glass products, with ad hoc shapes and sizes, specific to each customer, who in many cases supplies the mould to the manufacturer[8]. In other national and Commission cases, however, this distinction is not identified[9].

A precise definition of the **hollow glass container distribution market** has not yet been provided. In the recent case *C12597 - VETRI SPECIALI/GENERALVETRI* (2024) the AGCM did not, in fact, reach a definition of the aforementioned market that can be considered conclusive. In any case, the AGCM has indicated that a determining factor in the above definition "*seems to be the size of end customers, as glass container companies use distributors for deliveries to small businesses located in the Italian territory. By contrast, because of high volume purchases (according to the information found, the minimum size would be that of a "full truck"), large user customers go directly to manufacturers of hollow glass products*."[10].

4.2.2. The relevant geographic market

The AGCM and the Commission have, in the past, found that the **market for the production of glass containers** was national in geographic scope, both for the segment pertaining to glass for industrial use and the segment concerning glass for domestic use. This is in view of the high transportation costs and low level of trade between EU member states[11].

A precise definition of the **hollow glass container distribution market** from the geographic point of view has also not yet been provided. However, in the recent case *C12597 - VETRI SPECIALI/GENERALVETRI* (2024), the AGCM underlined the potential relevance, for the purpose of determining the geographic extent of the market under consideration, of the percentage of glass transportation costs, which would appear to be the main driver in assessing the economic expediency of covering a given geographic area[12].

[7] *Ibid*.
[8] Case C12597 - *Vetri Speciali/Generalvetri* (2024); Case C10103 - *O-I Manufacturing Italy-Zignago Vetro/Vetri Speciali* (2009).
[9] Case C10973 - *Owens Illinois/Verrerie Du Languedoc* (2011); Case M.6025 - *Ardagh/ Impress* (2010); Case C6242 - *Bormioli Finanziaria/Bormioli Rocco & Figlio* (2004).
[10] Case C12597 - *Vetri Speciali/Generalvetri* (2024).
[11] Case C12597 - *Vetri Speciali/Generalvetri* (2024); Case C10973 - *Owens Illinois/Verrerie Du Languedoc* (2011); Case C10103 - *O-I Manufacturing Italy-Zignago Vetro/Vetri Speciali* (2009).
[12] Case C12597 - *Vetri Speciali/Generalvetri* (2024).

4.2.3. How is dominance determined?

Having identified the relevant market, the next step is to determine whether the company enjoys market power such as to constitute a **dominant position**.

To make this assessment, **market shares** can be used as a first guide, since:

- a market share **above 50%** allows antitrust authorities to **presume that there is dominance**, it being understood that the company could always prove otherwise ("relative presumption of dominance");

- a market share **between 40% and 50%** constitutes an **indication of dominance**. In this event, to determine whether a company is dominant or not, additional factors must be considered. These include, for example, barriers to entry, the company's economic-financial capacity, the level of vertical integration, the existence of economies of scale, the ability to access sources of supply and major resources, and the bargaining power of customers; and

- a market share **below 25-30%** indicates that **dominance is unlikely**, except where the market in question meets special conditions. This is the case, for example, in markets where there are no competitors with significant market shares, or in oligopolistic markets.

Market share is not, however, the only indicator used to ascertain dominance. The other factors to be considered are:

- **Market share stability**. For example, a company's dominant position in a particular market could be questioned if the relevant market share has been particularly volatile over the years. On the other hand, holding a consistent and constant market share for a given period (typically five years) is a significant indicator of the existence and stability of a dominant position.

- **Number and strength of competitors**. The assessment of dominance is closely linked to the economic power held by competing companies. A given company may be considered dominant even if its market share is not particularly large but its competitors are particularly numerous and hold fragmented market shares[13].

- **Barriers to entry**, whether legal or economic. The former exist where, in order to operate in a particular market, specific administrative authorisation must be obtained. This is the case, for example, in the markets for telephony, gaming and betting, pharmaceuticals, etc. Economic barriers, on the other hand, are more widespread and varied. For example, in Case *A436 - Rail Transport*, the AGCM identified economic barriers in the elevated risk level of investments, which feature high sunk costs. Or, in Case *A383 - Plasterboard Market*, economic barriers were identified in the limited access to raw material and relating to gypsum supply sources, given the limited number of quarries and production sites. Again, in case *A419*

[13] For example, in Case A333 - *ENEL Trade - Eligible Customers*, the AGCM found that, with a market share of 37%, ENEL held a dominant position in the market for the sale of electricity to "eligible" customers. This was because of the large number of other players operating in the market, all of whom held very small market shares.

- *Giochi24/Sisal*, the economic barrier was found to be the ability of the dominant operator, unlike its competitors, to access an extensive physical and telematic sales network.

- **The countervailing buying power of buyers**. In markets where customers are typically large and thus able to counterbalance the supplier's market power, it is less likely that the supplier will be considered dominant. This is the case, for example, in the production markets for certain foodstuffs sold to large supermarket chains with considerable bargaining power.

4.3. DEFINITION OF "ABUSE"

As mentioned above, antitrust law does not prohibit companies from holding a dominant position per se, but it does prohibit abuse of such positions.

"Abuse" is defined as conduct that seriously and unjustifiably distorts competitive relationships within the market in question.

Abuse will usually occur in markets where a particular company is dominant, but this may not always be the case. The company in question could, in fact, use its market power in a given market to unfairly gain competitive advantages in other markets. **A company that is found to be dominant in a particular market must therefore behave responsibly in all the markets in which it operates**.

Distinguishing between lawful and prohibited conduct is often difficult as abuse of a dominant position depends to a large extent on objective determination of the actual facts and **must, therefore, be determined on a case-by-case basis**.

Some abusive conduct could, in fact, be considered lawful where it appears to be **objectively justified**. In practice, this means that a dominant company's conduct must be **proportionate** in achieving its legitimate business interests: conduct involving restrictions of competition that may be deemed necessary - in itself and in terms of the extent of the restriction - to defend the aforementioned interests are, therefore, not considered lawful.

4.4. MAIN TYPES OF ABUSE

Abusive conduct generally falls into two categories:

- **Exploitative abuse**, which includes practices by which a dominant company makes supra-competitive profits by exploiting its market power over its customers.
- **Exclusionary abuses**, which include all those strategies designed to obstruct the activities of competitors in order to monopolise the market.

The most frequent types of abusive conduct are described below.

4.4.1. Refusal to contract

Non-dominant companies are generally free to enter into contracts with whomever they wish. Dominant companies, on the other hand, **are specifically obliged to use their market power responsibly**. Any refusal to contract with certain customers or potential customers could therefore constitute abuse of a dominant position if there is no objective justification for such a refusal. This may happen especially where the refusal is motivated by the intention to eliminate a competitor or potential competitor.

Abusive conduct occurs not only in the event of flat-out refusal, but also where the dominant company imposes de facto unacceptable supply conditions (e.g. onerous prices, discriminatory conditions, undue delays in supplies, etc.).

A case of abusive refusal to contract could, for example, exist where a dominant company in the supply of silica refuses to supply glassworks, since this is an indispensable product for glass production.

For a dominant company's refusal to contract to be considered lawful, it must be **objectively justified**. This justification must relate to:

- the characteristics of the dominant company (e.g. a glassworks might refuse to supply bottles of a particular type where (a) furnace capacity is saturated by the production of containers of a different shape or type and the company therefore lacks sufficient output potential to meet the customer's demands, or in the event that (b) the cost of the supply renders it unprofitable); or
- those of the company requesting the supply (e.g. where a company has a bad payment reputation).

Dominant companies must therefore be very cautious if they intend to refuse to do business with a particular customer and ensure that this decision is always based on a sound, objective justification.

4.4.2. Preventing access to essential infrastructure

In the context of refusal to contract, case law has developed the "essential facility doctrine". This specifically concerns dominant companies that own or control indispensable infrastructure to which competitors or downstream operators **require access** in order to provide their services ("**essential infrastructure**"). In such circumstances, dominant companies may not deny access to the infrastructure in question or otherwise grant it on unfair or discriminatory terms, except where such a denial is economically or technically justified (e.g. it is not possible to share the infrastructure).

The term **essential infrastructure** refers to an indispensable factor that cannot be recreated and for which there are no real alternatives for competitors or operators in downstream markets.

Companies in a dominant position and, in particular, those that control indispensable services, products, or infrastructure (e.g. sources of raw materials for glass), should behave prudently.

4.4.3. Discrimination

Both Article 3 of Law 287/1990 and Article 102(c) of the TFEU expressly prohibit dominant companies from **applying objectively different conditions for equivalent services in their business dealings with other contractors** that seek to derive unjustified competitive advantages for the dominant companies in question.

This principle essentially binds the dominant company to equal treatment of all third parties with whom it does business, and therefore not only customers, but also distributors, suppliers and competitors.

By way of example, discrimination exists where a dominant company **treats comparable customers differently**, deciding to apply more unfavourable terms to some, even if all customers have the same characteristics in terms of creditworthiness or volume of purchases.

Discrimination also exists when a company **treats different customers in the same way**, imposing, for example, a standard delivery charge, regardless of how far the customer is from the plant.

Discriminative abuse is not prohibited conduct per se, but is only prohibited where it cannot be economically justified and therefore there is no explanation other than the intent to benefit some contractors at the expense of others. For example, a price difference charged by a particular company to different customers could be justified by currency fluctuations, or different storage and transportation costs, etc.

In general, a dominant company should never discriminate between its customers if the only potential justification for such conduct is:

- **to preserve or strengthen the dominant position it already holds;**
- **to unfairly exploit its dominant position; and/or**
- **to disadvantage one customer over others.**

4.4.4. Tying

A "tying practice" occurs when a company **makes the supply of a product to a customer conditional on the purchase of other products or services that are economically separable from the former, where these products need not be sold together**.

Generally, an already dominant company in a given market uses this type of conduct to extend its power also to adjacent markets. By means of the tying practice, the company forces its customers to buy "tied" products along with the main product, thus preventing its competitors from making these sales and eroding their market share.

As a concrete example, one of the most well-known European cases related to tying practices involved Microsoft, a widely dominant company in the worldwide PC operating system market. Microsoft was fined nearly 500 million euros by the Commission for abusing its market power by bundling the sale of the Windows Media Player program - a product which faced competition from several other companies - with its own Windows operating system, found on the vast majority of PCs.

Bundling is a particular form of tying practice in which a dominant company, for one or more products in the same range, exploits its advantage by applying pricing policies that make it cheaper to purchase the entire range of products rather than the individual product.

Under certain conditions, a binding practice may be **objectively justified** and therefore legal. For example, joint selling may occur for technical reasons or economic efficiency, or it could also be the result of commercial uses. In any case, the onus is on dominant companies to prove the existence of objective justifications.

4.4.5. Illegitimate pricing policies

Both Article 3 of Law 287/1990 and Article 102(a) TFEU prohibit a dominant company from directly or indirectly imposing unjustifiably excessive or otherwise unfair purchase prices, sales prices or other contractual conditions.

In general, **prices can be considered "unfair" if they do not relate to the "economic value" of the product supplied**.

The typical way that a given company can exploit its dominant position is to raise prices above the levels that would be expected in a competitive market, while simultaneously maintaining unchanged output levels. This type of abuse is known as **excessive prices**.

A dominant company must be particularly cautious in its pricing policies and must not charge **excessively high prices**, especially where such prices would not be affordable at all in a more competitive market. Price should relate to the "economic value" of the product, which can be determined by referring to the cost of production or the prices of similar products. Where dominant companies charge prices that are disproportionate to the economic value of the product, these prices may be considered excessive and therefore constitute abuse of a dominant position.

The following situations may be indicative of cases of excessive pricing:

- excessive profits compared to those of competitors;
- significant differences between prices charged in different geographical areas that cannot be objectively justified;
- prices that are not in line with the level and trend of production costs;
- significant gap between the dominant supplier's prices and those charged by competitors.

On the other hand, a dominant company could also choose to adopt downward pricing policies, even to the point of selling its products below cost, with the intention of excluding from the market any competitors who are unable to sustain the price war for an extended period. Furthermore, excessively low prices can also constitute a significant barrier to entry and "discourage" potential companies interested in entering the market.

By adopting this approach, the dominant company deliberately chooses to sell "at a loss" for a short time, before raising prices once competitors are eliminated from the market, and therefore without running the risk of losing customers. In such cases it is customary to speak of "**predatory pricing**".

Price reductions are not illegal per se, even where they put competitors at a disadvantage. However, markdowns constitute abuse if they are solely the means by which a dominant company intends to eliminate competition so that it can subsequently raise prices.

The **intentions of a dominant company that reduces prices** are therefore critical in determining whether or not abuse has occurred: the achievement of lower profits under the regime may be an indication of predatory behaviour.

Predatory pricing can also be applied in order to **harm a specific competitor** ("selective reductions").

Even in this case, however, the dominant company will have the opportunity to demonstrate that the decision to reduce prices is **objectively justified**. If the only reason to reduce prices is to prevent a

competitor from profitably conducting its economic activity, an antitrust law violation is likely to have occurred. **As such, selling below cost can present serious risks**.

To ascertain the company's actual intent, antitrust authorities will normally examine internal corporate communications (such as management presentations or e-mails). It is therefore essential to follow the guidelines for drafting internal documents set out below in this Code.

4.4.6. Loyalty discounts

A discount system, even when applied by dominant companies, generally has positive effects for customers and consumers, who can benefit from price reductions.

However, in certain cases, a dominant company may introduce discount policies in order to exclude competitors. Usually this is done by providing progressive discounts, which increase with the degree of customer loyalty. Such a loyalty practice could discourage customers from buying competing products altogether.

Accordingly, under antitrust law, both quantity discounts (i.e. those related to the quantity purchased) and short-run promotions are lawful, provided that such business practices do not completely prevent customers from also purchasing from competing manufacturers.

A dominant company may therefore grant rebates that are linked, for example, to the achievement of large orders or otherwise enable the dominant company to reduce production costs (due to economies of scale achieved).

However, the following practices **are as a rule deemed unlawful** if adopted by a dominant company:

- "loyalty" discounts that reward customers for purchasing all (or a significant portion) of their annual requirements, and that are designed to drive customers away from the dominant supplier's competitors;
- "English" clauses, i.e. those that require a customer to notify the dominant company of cheaper offers from other suppliers to allow the dominant company to offer the price charged by the competitor, which ultimately prevents the customer from buying from competitors.

The types of discounts that **could be considered unlawful** if introduced by a dominant supplier include:

- those contingent on the customer purchasing their entire requirements (or a significant portion thereof) from the dominant supplier;
- those contingent on increasing the quantities purchased from the dominant supplier or other measures that serve to increase customer loyalty;

- those calculated in relation to all quantities purchased during the year, rather than limited to incremental sales (this method of calculation produces the effect of building customer loyalty over long periods);
- those calculated in relation to sales made over a longer period than is common practice in the relevant industry.

4.5. RULES OF CONDUCT

If the Company is dominant, or potentially dominant, in one or more markets, the following rules of conduct must be observed.

What to do:

- As a rule, treat all clients equally and always seek legal advice before engaging in discriminatory treatment;
- seek legal advice where a policy of very low prices is to be adopted, even if only for short periods;
- seek legal advice before applying loyalty discounts.

Conduct to be avoided without first seeking legal advice:

- "bundling" the supply of one product with another (the Company's or a third party's), making both purchases mutually dependent and not providing discounts for the joint purchase of such products;
- preventing a supplier from supplying a competitor of the Company;
- refusing to supply a customer in order to prevent them from competing;
- imposing exclusivity or other forms of restriction of competition on a supplier, agent or distributor;
- reducing prices to below production costs;
- using discounts to harm or eliminate a competitor or to build customer loyalty.
- imposing an obligation on customers to report any improved offers received from competitors, or prohibiting them from accepting such offers if the Company is willing to match them.

In general, where there is any doubt regarding the conduct or the measures to be adopted to minimise the risks to the Company, the Antitrust Compliance Officer and, where appropriate, legal counsel must be consulted.

5. GUIDELINES FOR THE PRESERVATION OF INTERNAL DOCUMENTS

5.1. WHAT IS MEANT BY "DOCUMENT"?

In terms of antitrust authority investigations, the definition of "document" is much broader than one might think. Pursuant to Article 10 of Law 287/1990, in fact, "document" means: "*any graphic, photographic/videographic, electromagnetic or any other kind of representation of the content of acts, including internal and informal ones, created and used for the purposes of the company's activities, regardless of the document author's level of responsibility or representation, and any document produced or contained on computer support*."

The definition of a document therefore does not exclusively include what is written on paper. In addition to classic written documents, the following - among others - also fall under the definition of "**document**":

- e-mails;
- faxes;
- any data stored on corporate computers or smartphones;
- market studies;
- business plans;
- confidential notes or other confidential documents;
- presentations to teams, committees or commissions;
- handwritten notes;
- drafts or later versions of documents;
- diaries;
- statements of expenses incurred.

As the above suggests, **almost anything can be considered a document**, in the context of an antitrust investigation.

It is also necessary to be aware that deleting an e-mail from a computer or smartphone inbox does not necessarily mean that it has been deleted altogether. Regardless of whether it has been deleted by the person who read it, the e-mail message in question may continue to exist on paper, in other e-mail inboxes (e.g. the inboxes of other recipients included in "cc" or "ccn", the inbox of the person who sent it), in backup logs, on the corporate network or on hard drives.

The authorities also have broad powers to demand all kinds of documents.

It is therefore important to be aware that **any written information, in any form, could become evidence in an antitrust investigation or an action for compensation against the Company**.

The only exception to the rule requiring companies to hand over documents concerns those **drafted by external counsel and covered by lawyer-client privilege**. To facilitate the identification of documents covered by the legal privilege, these should be marked with the **words "*Lawyer/Client Correspondence*"**.

The legal privilege also applies to in-house counsel e-mails and documents to the extent that these refer **exclusively refer to the content of exchanges with external counsel, but not where further considerations are added**. For example, this includes e-mail exchanges with external counsel that are forwarded internally within the Company, but to which in-house counsel add their own considerations/assessments. In this case, the document may be acquired and used as evidence, at least for the part containing the in-house counsel's additional considerations.

Destroying and/or altering documents to obstruct or impede any current or future investigation by an antitrust authority may result in the imposition of significant fines.

Furthermore, a company's failure to cooperate with the investigation is considered an aggravating circumstance, which could also result in an increased penalty if the proceedings ascertain that an antitrust violation has occurred.

6. GUIDELINES FOR THE MANAGEMENT OF SURPRISE INSPECTIONS

Inspections are carried out unannounced (and usually during office hours) by officials from the AGCM or the European Commission. Inspectors are generally accompanied by officers of the Finance Police.

Inspections do not necessarily imply that the Company is involved in an antitrust violation.

The Company's headquarters and business premises, company motor vehicles, and any other office where documents relevant to the investigation may be stored could be subject to inspection.

Directive (EU) 1/2019 also provides for the possibility for officials to conduct inspections at the homes of executives, Directors, and, in general, company staff where there is a reasonable suspicion that documents relevant to evidence of a violation of antitrust law are kept on such premises. However, this power may only be exercised when expressly authorised by the judicial authority.

In the course of the inspection, antitrust officials are entitled to access all documentation (on paper or computer) relevant to the subject of the ongoing investigation.

Where necessary, inspectors may ask the relevant authorities to affix seals to the inspected premises or business records.

Inspectors may also take copies (in any medium) of relevant documentation and question company personnel. Answers provided by company managers or employees during the inspection may be archived in the inspection record.

However, as noted above, the inspectors **may not view or make copies of correspondence between the Company and its external counsel or documentation from the latter**. This documentation is covered by the "legal privilege".

Furthermore, **company employees are not required to answer questions that could lead to a violation of competition rules** ("prohibition of self-incrimination").

The Company may ask its external counsel to attend the inspection. However, AGCM and Commission officials are not obliged to wait for their arrival.

6.1. RULES OF CONDUCT

In the event of inspections by competition authority officials, a set of rules of conduct must be observed:

- Antitrust and law enforcement officials must be welcomed and **their identities must be verified**, by requesting identification documents where necessary.
- **A request must be made to review the authorisation for the inspection and the order launching the investigation**. The object and purpose of the inspection (which should be specified in the authorisation document) must be carefully checked. The officials in charge are required to present this authorisation at the beginning of the inspection.
- **Copies** of such documents **must be promptly sent** to the Antitrust Compliance Officer and the Company's legal counsel.
- The Antitrust Compliance Officer must, in turn, immediately contact **the Company's legal counsel**.
- Where the Antitrust Compliance Officer cannot be contacted, the Company's legal counsel must be contacted immediately. Contact telephone numbers for legal counsel are provided at the end of this Antitrust Code.
- AGCM or the Commission's officials should be asked **to wait for the arrival of outside counsel before starting the inspection**.
- Officials should be escorted to a waiting room - i.e. to a room where no documents are kept - while awaiting the arrival of the Antitrust Compliance Officer and/or legal counsel.
- Officials should be accompanied until the legal counsel and Antitrust Compliance Officer arrive.
- The authorisation and order beginning the investigation should be carefully reviewed, and it should be verified that the names of the officials in charge, locations and date of the inspection match.
- It is vital to ascertain the subject matter of the current investigation in order to allow the Antitrust Compliance Officer to verify the relevance of the documents collected during the inspection.
- It is important **to respond concisely and promptly**.
- **If you do not know or are not absolutely sure of an answer, reserve the right to respond later and in writing**.

- **You are not obliged to answer any question that may entail self-incrimination**.
- In any case, **before answering the inspectors' questions or providing any documents, the Antitrust Compliance Officer or, if applicable, the Company's legal counsel should be consulted**.
- Inspectors must be allowed access to all requested documentation, in any medium, provided that it is relevant to the subject of the investigation.
- **Access must not be allowed to documents that are irrelevant or covered by legal privilege**. Should any difficulties arise or if there is any doubt about the relevance of the documents or the existence of legal privilege, immediately consult outside counsel and the Antitrust Compliance Officer.
- Access to computers (and potentially smartphones) should only be permitted in the presence of the Antitrust Compliance Officer or in-house and/or external counsel.
- Every inspector must be accompanied at all times by a company employee or external counsel to verify that there is correspondence between the subject and purpose of the inspection and the acts performed by the officials at each stage of the inspection (e.g. in the context of an inspection dealing with a potential antitrust violation relating to wine bottles, officials are not permitted to examine documents related purely to glass for cosmetics).
- **Under no circumstances should the inspection be obstructed or should any attempt be made to erase, conceal or destroy documents**. Such behaviour goes against the Company's culture and compliance rules and may lead to significant fines being imposed by the antitrust authorities. It may also constitute an aggravating factor should the proceedings identify a violation.
- A copy should be made of all documentation viewed or taken by inspectors.
- The Antitrust Compliance Officer, assisted by the Company's legal counsel, must reserve the right to request that documents that are confidential or contain sensitive information remain confidential.
- The accuracy and completeness of the inspection report must be verified and a copy requested. The report must be promptly forwarded to the Company's in-house and external counsel and the Antitrust Compliance Officer.

Antitrust Compliance Officer, Zignago Vetro S.p.A.

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Contact details of the Company's External Legal Counsel

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