

SOFIDEL GROUP
ANTITRUST CODE





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1. INTRODUCTION AND GUIDE TO THIS DOCUMENT

In order to comply with competition legislation (hereinafter also antitrust), the Sofidel Group has set itself the objective of adopting a Code (hereinafter “Code”) that is intended to implement the fundamental principles of this legislation. As such, it becomes for everyone the mandatory guidance and reference tool for the strategic decisions of the company.

This Code is aimed at the Sofidel S.p.A. parent company and all its subsidiaries with registered offices in European Union Member States (the “Group”) and therefore subject to European and national antitrust laws and the resulting supervision of the European Commission and Antitrust Authorities of the Member States concerned (the “Authorities”).

This Code is intended as a true “Code of Conduct” aimed at facilitating the understanding of laws that are in any case binding for all Sofidel personnel, because antitrust rules concern all of us as part of an active business group in the market. The Group has therefore made a flexible working tool available that can be consulted at any time to guide our daily work in full compli-

ance with antitrust laws.

This choice fits in well with the principles and values expressed by the Sofidel Group in its Code of Ethics, and confirms the commitment of the Group and its members to fully comply with antitrust laws and principles.

The first part of this document is duly aimed at defining the key antitrust principles, understood as *“the set of legal rules that are intended to safeguard competition among businesses, with the ultimate goal of protecting the free market economy,”* and in particular regarding the prohibition, for established businesses on the market, of ***understandings and collusions that have the effect of restricting or distorting competition*** and/or ***abusing any dominant market position to the detriment of its competitors.***

The regulatory areas relating to company combinations (e.g. mergers) and consumer protection are not included and do not relate to the scope and purpose of this Code. In relation to these areas, the Corporate Legal Department will provide the appropriate

compliance policies that will cover the relevant areas of the Group.

The issue of whether a specific behaviour is covered by the prohibitions and penalties imposed by competition protection rules is highly complex and depends greatly on the circumstances of each case. Therefore, it should be clarified that this document is not intended to provide, nor can it do so,

a full discussion of the range of problems that can arise from the application of these rules to each specific situation. For any issue relating to the concrete application of these rules to a specific case that can not be resolved by consulting this document - and, anyway, in case of doubt - the employees must consult, individually or jointly with their manager, with the **Corporate Legal Department**.

2. NATURE OF THIS DOCUMENT

This Code is a summary and explanation of the legal obligations that, as such, are binding for directors and staff of all Group companies, and all those who, by virtue of special proxies or powers of attorney, represent the Group companies in relation to third parties.

It follows that non-compliance (in formal work situations, in all communications regarding business topics, including email, and even in informal social contexts outside the office) with the basic rules of behaviour that follow, may cause, according to the applicable laws and the provisions of existing collective bargaining agreements, the enforcement of the appropriate disciplinary actions against

the responsible employees, as a result of a breach of their duties towards the company.

In this regard it should be noted, however, that the Authorities can intervene to impose compliance with antitrust rules and sanction their violation by imposing fines on the company charged with anticompetitive behaviour ranging up to 10% of turnover of the company or even of the Group to which the company belongs.

Finally, it should be noted that the Authorities of some Member States may also impose criminal penalties related to violations of antitrust rules.

3. METHOD OF IMPLEMENTATION AND DISSEMINATION

The rules contained in this Code were approved by the Sofidel Spa Board of Directors on 29/06/2015 and shall be considered binding for the entire Group and fully compliant with the Sofidel Code of Ethics.

The antitrust compliance officer (the “**General Manager**”) is part of the Sofidel S.p.A. Corporate Legal Department, and will have the following duties/functions:

- i.** definition and maintenance of an antitrust compliance system;
- ii.** dissemination, application and updating of this Code;
- iii.** preparation and implementation of an education and training programme regarding antitrust laws;
- iv.** notification to the Surveillance Body (“SB”) and the Human Resources Department of reports received from Unit Managers and/or any employee (even if made anonymously), if the reported conduct has the characteristics of a violation of the rules of conduct of this Code, or otherwise are deemed detrimental to the interests of the Group due to elements likely to give rise to cases prohibited by the antitrust law summarized here;
- v.** conducting self-monitoring and investigations of conduct that occurred in cases where actual or suspected violations of the antitrust laws have been reported;
- vi.** preparation and application of countermeasures and prevention plans;
- vii.** formulation of a report on the state of compliance, including violations, for the Surveillance Body and the Human Resources Department;
- viii.** guidance and support actions for the establishment and maintenance of antitrust law compliance programmes;
- ix.** advice on antitrust laws to all those who request it.

With reference to paragraph iv. above, having received the Corporate Legal Department report, the Surveillance Body and the Human Resources Department will evaluate the content in order to adopt any necessary measures in relation to those involved, in accordance with the provisions of the law, contracts and Group Code of Ethics.

The Human Resources Department will identify, and promptly communicate them to the General Manager, the antitrust compliance managers for the various business units and/or subsidiaries active in the Member States (the “**Unit Managers**”) who will be assigned the following tasks/functions:

- a. ensure that the performance of daily business activities occurs in strict compliance with anti-trust laws and monitor compliance within their own business unit/subsidiary;
- b. notify the General Manager of any actual or suspected violation within their business unit/subsidiary;
- c. communicate to the General

Manager the results of the self-monitoring carried out within their business unit/subsidiary at least once every financial year;

- d. immediately stop any violation that is reported or which they detect themselves.

A copy of this Code and all its future updates shall be given to all Group employees, who are asked to certify its receipt.

Once each person received a copy of this Code, they should examine and discuss it with their Unit Manager at a special meeting in which the procedures for applying each principle will be identified. The Unit Managers should conduct the meeting to discuss the methods of application of the Code only after having attended the mandatory training and, during the meeting, they should also encourage the employees in question to report any behaviour that may be in conflict with the rules provided.

This Antitrust Code, with the original version in Italian, will be published on www.sofidel.it and in this way made available for consultation by all stakeholders.

4. ANTITRUST OFFENCES, RULES OF CONDUCT AND THE MARKETS AFFECTED BY THIS CODE

4.1 EU antitrust regulations and national antitrust regulations - supervisory procedure

European Antitrust Regulations (as far as applicable here: Articles 101-102 Treaty on the Functioning of the European Union “**TFEU**”), in principle, prohibit altering the normal functioning of the market, which is based on merit.

They are already in themselves binding in all EU Member States and are supervised first of all in each State by an Authority. The most complex and sensitive cases can be handled and opened directly by the Directorate-General for Competition of the European Commission, which nonetheless uses the operating and investigative structures of the Authorities of the Member States concerned.

Each State has its own national antitrust law, which reproduces the same rules and implements them on a national level. In fact, as of May 1st, 2004, the Authorities directly apply the rules contained in the TFEU and no longer the national ones.

In this way, there is a structured system for supervising the market and competition in Europe (but also worldwide).

This system ensures compliance with the prohibition of any coordination and any agreement between competitors and the prohibition of abuse by a company in a dominant position.

4.2 Definition of company

It is extremely important to note that under antitrust law, most of the time a group of companies can be regarded as a single company. As we shall see later, usually an agreement between companies belonging to different groups falls under the ban on restrictive agreements under art. 101, paragraph 1, of the TFEU, contrary to what happens for an agreement between companies within the same group. In this regard, it should be noted that in case of a violation detected by the competent Authorities, the latter can parameterize the fine to be imposed on the parties to the agreement, not based on the turnover of the parties, but on the consolidated turnover of

the group to which they belong - up to a ceiling of 10%. Therefore, in this document, the parent company Sofidel S.p.A. and all the companies it controls

directly and indirectly, active in the markets of the European Union Member States, are summarily referred to as the Group.

5. UNDERSTANDINGS AND AGREEMENTS

These rules prohibit understandings between companies that may have the purpose or effect of restricting competition.

The term “understanding” does not necessarily mean a formal agreement. The understanding may be written, verbal, or resulting from consistent and business-like *behaviour*. This means the following can constitute evidence: an exchange of emails, documents saved on a computer, a conversation that took place during a meeting, including a trade association meeting, an exchange of (opinions on) sensitive information, meeting notes, etc... The principles of this Code should therefore be observed with regard to all types of documents and correspondence produced in the course of one’s work and in the use of systems, resources, tools and premises owned by or available to the Group.

For example, a series of emails exchanged from business addresses with

competitors in which confidential information on sales policies is exchanged, even without an express agreement, could be evidence of a prohibited agreement.

More specifically, the existence of the understanding could be derived from every *communication* that has the effect of influencing the commercial behaviour of the companies or of disclosing to them the behaviour that one or more of the other companies intends to adopt. *Adherence* to an understanding can be deduced even just from the behaviour of a company on the market. For example, given the breadth of this definition, any contact between competitors, even indirect, can create a risk of application of antitrust laws, especially when it is followed by the consistent behaviour of the competitors. Note that for there to be a prohibited understanding, it is not necessary that the parties have actually achieved the desired result: the lack

of success of the agreement does not constitute a valid defence before the Authority.

The relevant understandings are both those occurring between direct competitors and those in vertical relationships, that is to say between manufacturer/supplier, manufacturer/distributor or manufacturer/customer. Agreements between competitors are generally considered to be more restrictive than those with customers or suppliers.

In fact, it is assumed that the agreements with customers or suppliers do not result in anti-competitive effects, provided that - as specified in greater detail in section 5.2 below - (a) they are entered into between companies that do not hold significant power in the markets affected by the agreement, and (b) the agreements do not contain so-called “serious” restrictions (i.e. the fixing of resale prices, some exclusive arrangements - in terms of geography or customers - and non-compete clauses lasting more than five years).

Otherwise, the understandings between competitors normally fall within the prohibition under art. 101, paragraph 1, of the TFEU (subject to certain exceptions that will be discussed in more detail

below in art. 5.3.). For this reason, companies wishing to enter into an agreement, especially with a competitor, will have to assess in advance whether that agreement may be exempted from the prohibition under art. 101, paragraph 1, of the TFEU. In this regard, in order to be exempted from the prohibition, the understanding in question must:

- i. bring substantial economic benefits, consisting of an improvement in production or distribution (think for example of an research and development agreement), and
- ii. generate a benefit for consumers (for example by decreasing the price or improving the quality of the product or by facilitating distribution), and provided that
- iii. it does not eliminate competition for a substantial part of the products in question and
- iv. it does not contain restrictions that are not indispensable to the pursuit of the positive effects of the understanding.

Of course, it is understood that the self-assessment put in place by a company under which the understanding with an-

other company would be exempt from the prohibition under art. 101, paragraph 1, TFEU, in consideration of the existence of all the mentioned conditions, remains subject to possible examination by the competent Authorities. The Authorities may well reach a different conclusion and, therefore, consider the understanding in question not to be covered by the exemption and, as a consequence, prohibited.

5.1 Horizontal agreements

In particular, **agreements** or **understandings** by any means, direct or indirect, explicit or tacit (even in conversations and emails), between competitors, which have the effect of limiting or restricting competition, are prohibited.

The following can be considered as such:

1. The direct or indirect fixing of prices: for example, setting minimum or maximum prices, price ranges, increases or decreases in prices, developing formulas for the determination of the final price, limiting or setting discounts, rewards or special benefits, or committing not to offer lower prices than those already offered by another competitor, or limiting, standardising, increasing or decreasing discounts, promotions, rebates, terms and conditions of sale, profits, costs, terms and conditions of credit, and terms of delivery;
2. The exchange or disclosure of information (for more details see Art. 5.1.1. letter c);
3. The limitation or control of production/productive capacity;
4. The division of markets (e.g. limitation, direct or indirect, of exports or imports between the territories of Member States or between various local markets within a Member State);
5. The distribution of customers (e.g. dividing customers between different competitors or agreeing on the selection of certain customers, on their classification, on the termination of supplies to certain customers or classes of customers);
6. The agreed refusal to enter into a contract with a potential customer or supplier (e.g. boycotting those who do not want to adhere to the understanding),

7. Setting a maximum price or other conditions of purchase, to be paid to certain suppliers (discrimination);
8. The use of relationships with other parties in the same market for the implementation of restrictions on competition (for example, through the use of and/or creation of and/or participation in trade associations aimed at restricting competition);

The above will be more indicative of the violation of the prohibition the more systematic it is, repeated over time and covering a relevant portion of the market (for the meaning of relevant market, see paragraph 6 below).

Examples:

- ▶ In 2013, the European Commission sanctioned (for a total of 1,470,515,000 EUROS) seven well-known television and monitor manufacturers for having put in place a cartel for more than ten years for the distribution of such products, realizing profits through **common mechanisms of pricing and conditions of sale** of their products, **partitioning national markets** and **sharing information for the purpose of fixing prices and/or common**

market conditions. Such behaviour, combined with the particular strength of the companies in question, which operate not only in Europe, but around the world, severely limited, according to the analysis of the Commission, access to the European market by competitors that did not participate in the cartel;

- ▶ In January 2014, the European Commission sanctioned the main producers of foam for mattresses, sofas and automobile seats (114 million EUROS) for price fixing for this material, affecting the price of products derived from it in at least 10 EU Member States, with sales at amounts well in excess of what was actually justified and feasible (comparison with other European countries);
- ▶ The European Commission sanctioned (for about 141 million EUROS) five manufacturers of electric cables for automobiles who had divided up the geographical distribution of their products in Europe, adopting policies of reciprocal non-interference;
- ▶ The European Commission sanctioned (for about 13 million EUROS) certain water treatment system

manufacturers who had agreed a periodic division of sales territories in Europe through a careful policy of agreed price rises and/or drops;

- ▶ The European Commission fined Dutch brewing companies for having agreed the discounts to be applied to the supplies to pubs/bars (the same discounts were applied by all the competitors and there were regular meetings of representatives of the companies to take stock of the situation and decide how to develop pricing/discounts).

5.1.1 Clarifications on certain types of Horizontal Agreements

a) Price fixing (Art. 5.1, item 1 above)

In particular, the rules prohibit agreements between competitors that have the effect of limiting or restricting competition in a relevant market (for the definition of relevant market, see paragraph 6 below) and that concern:

- All conditions of sale that have an effect on prices, such as discounts, credit terms, timing or announcements of price changes, and use of pricing formulas.

- Imposition of a surcharge or other ancillary charge or the change of existing charges.

It should be noted that the sales guidelines to be followed can **only be those agreed with the company functions responsible for sales strategies, which will verify them with the Corporate Legal Department**. Personal sales initiatives and strategies by the individual salesperson who decides, without authorization, to act outside of the agreed guidelines with one or more customers, must be avoided. Every decision, even if taken based on reading this Code, must be checked in advance with the relevant corporate function and with the Corporate Legal Department.

b) Trade Association meetings

Trade associations are not prohibited per se by antitrust law (see art. 5.1, item 8 above). Membership of such associations requires, however, the adoption of the appropriate precautions and information notices, in order to prevent problematic situations from arising related to possible abuses of the association structure itself.

In particular, it is essential that if, in the course of meetings of these associations decisions, initiatives and/or propos-

als arise from some members aimed at altering the market conditions (adopting restrictions against new entrants, creating agreed and/or exclusionary and/or discriminatory pricing policies, etc.), the Group company representatives must communicate their opposition, stating in writing, if possible, the reasons for their dissent, including in the minutes or in any specific resolutions prepared by the members' meetings.

If it is found that the object of the meeting focuses entirely on anti-competitive practices, it is necessary to leave the meeting as soon as possible, ensuring that the opposition to the subject and the sudden abandonment of the meeting are recorded. It is important that the dissent of Sofidel representatives is clearly expressed to help prevent during a possible investigation the Group being involved in an agreement as a "silent" participant for the mere fact of having learned its contents. Even the mere abstention from voting and/or discussions on these issues could be interpreted as tacit agreement to the decisions of an anti-competitive cartel.

c) Exchange or disclosure of information

Although it is often necessary to disclose information to produce statisti-

cal reports, market studies, etc. to enable companies to assess market performance, any exchange between competitors of confidential/sensitive information that would normally constitute a trade secret should be carefully avoided, such as, for example, information that is not public available related to:

- (i) prices, discounts, profits, credit terms;
- (ii) sales conditions or other contractual conditions applied to customers;
- (iii) quantities produced, quantities sold, quantities delivered, market shares, production costs, production capacity and its utilization rate;
- (iv) sales territories;
- (v) customers;
- (vi) facilities;
- (vii) investments;
- (viii) distribution conditions;
- (ix) research and development;
- (x) launch of new products.

Note that “exchange” refers not just to what takes place through mutual communication among competitors, but also to what constitutes a unilateral act: so, for example, public announcements of price changes - while it is obvious that the Sofidel Group will always send its price lists to agents, distributors, brokers and customers - or public calls for keeping certain behaviours, including at conferences, interviews or trade association meetings.

In terms of competition law, it is generally considered lawful only to exchange information relating to aggregate statistical data, even if more detailed than normal statistical data, and always provided that individual data cannot be extracted from these aggregate statistics. However, even the exchange of aggregate data may facilitate collusion in particular markets with a very rigid oligopolistic structure.

It is also possible to exchange historical data. There is no predetermined threshold beyond which the data becomes historic (i.e. old enough to no longer pose a risk in terms of competition). This threshold depends on the specific characteristics of the relevant

market (for the definition of relevant market, see paragraph 6 below) such as, for example, the frequency of price renegotiation and the stability and transparency of the market.

It is important to note that the exchange of information must not occur either directly between competitors, nor indirectly, in particular through trade associations, distributors, agents or shared customers. Therefore, it is permitted to obtain competitive information from customers (for example, information about sell-in prices charged by the competition in order to obtain better conditions during negotiations), but these must absolutely not be used as a means of exchange of sensitive information with competitors. Still, it is acceptable to communicate business information (such as price lists, invoice discounts, discounts and year-end bonuses, listing fees, etc.) to third parties that legitimately need it (e.g. current or potential distributors and retailers), provided this is strictly necessary for ongoing commercial negotiations and that precautions are taken to ensure that the trading partner is aware that this is information that must not be communicated to the competition. For example, all communications with

the aforementioned parties (e.g. distributors and retailers) that contain the above information must contain the highlighted words “Strictly confidential”.

It is best to avoid any conduct that aims to make known one’s prices or other confidential information described above to the competitor. In fact, especially in a market with few manufacturers, such a practice allows a company to “decipher” the behaviour that a competitor intends to follow, and is therefore likely to alter their behaviour in the market.

In summary, contact between competitors must be kept absolutely to the minimum level possible. In addition, it is necessary to always document legitimately acquired sources of information: noting, for example, date and origin, in order to prove, if need be, the fact that the Sofidel Group has certain data on competitors which is not derived from illicit contact. Given the complex nature of the analysis of the present case, it is forbidden to provide confidential commercial information to market and research firms without first checking with the Corporate Legal Department regarding the manner in which the data will

be managed and/or forwarded to third parties.

It is permissible to perform internal assessments on the development of the market and to use reports from specialized companies for these assessments. It is also permissible to run “sample” checks (e.g. purchase a product incognito) on price trends and receive the results of these checks (provided it is not in the context of the price agreements prohibited under art. 5.2).

Email archives should be kept in good order, since they may be subject to inspection in the event of checks by Antitrust Authorities. While using the company email system, remember that you speak on behalf of the Group. It is also necessary to write in a clear and precise manner, to avoid misunderstandings on the issues covered by this Code, as emails remain in the archives for a long time and may be read out of the context in which they were intended/written and the personal relationships between sender/recipient. In particular, it is necessary to keep in mind that “jokes” and “subtext” between people who know each other and are able to understand the less serious tone of the email might not be

understood by an external reader of the same communication, who could misunderstand its meaning.

For any questions regarding the use of the information received, please consult the Corporate Legal Department.

5.2 Vertical agreements

As mentioned above, these types of understandings are entered into between companies active on different levels of the production/distribution chain and therefore, strictly speaking and in principle, between non-competitors. For this reason, **it is assumed that vertical agreements do not result in anti-competitive effects, provided that (a) they are entered into by companies holding a share that does not exceed 30% in the markets affected by the agreement - it is therefore necessary that the share held by the supplier on the market in which it sells its goods or services and the share held by the buyer in the market on which it purchases those goods or services does not exceed 30%, and (b) the agreements do not contain so-called “serious” restrictions (e.g. the direct or indirect fixing of resale prices, some exclusive arrangements - in terms of geography or customers - and non-**

compete clauses lasting more than five years; all the cases are described in more detail below).

Note: the above term “market”, which is also used below in this section 5 in reference to the understandings, has the same definition as “relevant market” expressed in paragraph 6 below with reference to the case of abuse of dominant position.

In the event of a share of over 30%, the agreement is not immediately considered prohibited, but must be evaluated carefully, as it is likely to result in closing or limiting the access of competitors to one or more markets affected by the agreement.

In light of the above, any form of agreement/understanding is prohibited with entities operating upstream or downstream who hold the market shares mentioned above, **if these agreements have one or more of the following characteristics:**

- a) **Imposition of fixed prices or minimum resale price.** The selling companies directly or indirectly set fixed or minimum prices that the downstream companies must apply to their customers and ultimately to

the consumer. For instance, the contract provides for severely penalizing conditions if the prices are changed with respect to the suggested price list or if the parties located downstream sell below the minimum recommended price. **On the other hand, (effectively) suggested/recommended prices (even minimums) are permitted, provided they do not include any instruments aimed at influencing the freedom of the downstream company to choose the price at which to resell that particular good or service. Conversely, setting the maximum resale price is allowed.** Case studies also reveal that a certain degree of monitoring of applied prices is typically allowed, provided that such activity does not prove to be oriented towards taking measures to stimulate compliance with the recommended price or minimum resale price or to discourage, through the adoption of retaliatory measures (for example, the withholding of supplies), any deviation from the recommended or minimum resale price. In this sense, the obligation for the store to have the offers approved by the manufacturer before applying them could also be seen negatively. It is permissible to

provide the sales network with an information notice on the average price level and the recommended price for the product in question, provided that it has no binding effect and that there is no penalty if the store decides to continue the offer, ignoring the recommendation.

- b) Exclusive distribution.** A ban cannot be imposed in relation to a customer (e.g. a distributor), to which a territory or a type or group of clients has been assigned, on accepting unsolicited orders from the customer in a territory other than the one assigned (while the prohibition against soliciting and procuring orders out of that territory or that group or type of customers remains valid). Thus, if distributor A is assigned Territory A and distributor B is assigned Territory B, distributor A can be prohibited from trying to sell the product in Territory B, reserved for distributor B (so-called active sales). However, distributor A cannot be prohibited from accepting an unsolicited order coming from a party in Territory B (so-called passive sales).
- c) Single branding.** If the market share of the supplier and the buyer exceeds 30%, it is generally prohibited

to impose an obligation for the buyer to purchase exclusively from the supplier, especially if, in view of the position of its competitors, the supplier holds significant market power; an exclusive obligation is the obligation to purchase more than 80% of requirements. Likewise, it is generally prohibited, even if the share is less than 30%, to impose an exclusive obligation for a period longer than 5 years; a tacitly renewable exclusivity agreement of any duration is considered as longer than five years.

d) Bundling. It is generally prohibited to impose the obligation to buy a product or service in conjunction with another product or service if the Group's share exceeds 30% in *both* the markets on which the products in question are sold and if the customer's share exceeds 30% in *both* the markets on which it buys the products in question.

Examples:

- ▶ The European Commission sanctioned an industrial sugar manufacturer who used a system of export rebates to discriminate against the different exporters it used for vari-

ous national territories within the EU single market.

- ▶ The European Commission sanctioned a well-known software company that had built a free audio/video file reader within an operating system it produced and distributed, thereby discouraging users from buying third-party software that had the same functionality.
- ▶ The European Commission deemed illegal the contractual clause whereby a supplier of a patented meat-packing service forced its dealers to use only the packaging they supplied.
- ▶ The European Commission sanctioned a manufacturer of windsurfing boards who contractually required its dealers to sell the board together with the sail that could be attached to it.

It is therefore clear that, except for cases of clear violations (e.g. price fixing, imposition of minimum prices, prohibition of passive sales in reserved territories, etc.), in order to assess the compatibility of a vertical agreement with antitrust law, it is appropriate and necessary to refer to the Corporate Legal Department.

5.3. Permitted agreements

Under certain conditions, it can be assumed that specific categories of agreements do not raise problems from the point of view of competition law: in particular, this is the case for Research and Development agreements and manufacturing agreements where the pooling of complementary skills or resources can generate substantial efficiencies.

The relevant regulations provide for the exemption of forms of agreements in the field of joint production/specialization for companies that have a combined market share not exceeding 20%, or in research and development for companies that have a combined market share not exceeding 25%, provided that the agreements fulfil all the conditions for the application of the category exemption and do not contain the “serious” restrictions listed in the regulations.

In general, understandings that concern the following topics are allowed:

- i. Technical research programmes or general studies on market trends or analysis of the industrial sector, especially through trade associations.
- ii. Cooperation, in particular through

trade associations, for the general promotion of the industry through the adoption of a common quality mark through advertising, public relations and lobbying.

- iii. Exchanges of information on the financial situation or the credit exposure of a particular customer, including through a trade association, if this is not the basis for a collective boycott. However, any discussion of discounts or credit terms between competitors is prohibited.
- iv. Cooperation between competitors on labour issues (for example, during collective bargaining).
- v. Scientific research that does not extend to marketing.
- vi. Participation in temporary consortiums or joint ventures where the parties are not competitors.

In addition, if the share held by the parties is particularly low (the sum does not exceed 10% of the market), it is deemed that the understandings are not liable to have an appreciable effect on the market and are therefore not considered anti-competitive, provided that they do not contain seri-

ous restrictions (e.g. price-fixing, production limits, division of markets or customers).

Given the complexity of the matter, it is best to contact the Corporate Legal Department before initiating any operation.

6. ABUSE OF DOMINANT POSITION

Other provisions prohibit the abuse of market power by a company. The conduct being examined will be abusive only if:

- i. the company holds a dominant position on the relevant market allowing it to essentially behave independently of its competitors, and
- ii. its conduct has no commercial justification.

First it is necessary to determine whether the company holds a dominant position on the product and geographic market. It will then be necessary to assess its position with respect to the “product market”, that is, with respect to the product in question and to all those products or classes of products that, for their intended use or for consumer preferences, can be substituted with the products in question. Once the relevant product

is identified, it is necessary to examine the company’s position in the geographic market, i.e. the geographical area in which the competition conditions are homogeneous with respect to the relevant product.

The relevant market combines the product market and the geographic market defined as follows:

- the relevant product market includes all products and/or services that are regarded as interchangeable or which can be substituted by the consumer at the time of purchase, because of the characteristics of the products, of their prices and their intended use (e.g. two different brands and types of toilet paper can be substituted, paper towels are not substitutes for handkerchiefs). The definition of the relevant product market is based on the possibility of substitution

from a demand point of view (i.e. by the consumer). In this context, we have to see if consumers of the product in question can readily switch to a similar product in response to a small but significant and non-temporary increase in price (between 5 and 10%). If, in view of this (hypothetical) increase, it can be expected that a significant part of the demand continues to prefer the product that has increased in price, the relevant product market will include only the product in question. If, however, there is likely to be a significant diversion of demand to another product or to other products, the latter must also be included in the relevant product market. However, in order to determine the competition conditions on the market, the Authorities may also assess the possibility of substitution from a supply perspective, namely the opportunity for other manufacturers to easily switch their production capacity in the short term (i.e. a period of time so short that further investments and significant adjustments to existing tangible and intangible assets, etc. are not required) in a way that enables

them to put goods or services on the market substituting those whose price has undergone the afore mentioned increase.

- The relevant geographic market comprises the area in which the concerned companies (e.g. the members of the cartel or the dominant company or the companies holding a joint dominant position) provide relevant goods and services and which can be distinguished from the adjacent geographic areas by the absence of significant possibilities of geographic substitution (on the demand side). Factors relevant to the determination of the relevant geographic market include the nature and characteristics of the goods and services concerned, the weight of transport costs, the existence of other entry barriers, consumer preferences, appreciable differences in the market shares of companies between adjacent geographic areas, and substantial price differences. Therefore there is the possibility that the relevant geographic market for the purposes of the Anti-trust Authorities' investigations differs from the "commercial"

geographic market of a company, which means the market identified by the sales policies of a company.

Note that the identification of the relevant market(s) varies from case to case, in consideration of the specific case being analysed - prohibited understandings, abuse of dominant position or company mergers and acquisitions (which are not the subject of

this Code) - and the different types of antitrust criticalities analysed in turn.

Accordingly, merely by way of example, the box shows the practice of the European Commission regarding company mergers and acquisitions from which it seems possible to infer some useful information about the possible definitions that could be adopted with regard to the activities of the Group.

In 2001, the Commission had the chance to consider an acquisition where both the buyer and the acquired party (target) were manufacturers of a range of paper tissue products. For our purposes, there is no need here to analyse this decision in detail or concern ourselves about the results of the evaluation, but it is instead useful to mention a few steps of the analysis conducted by the Commission, bearing in mind that such statements cannot however be considered as valid in absolute terms and applicable to each relevant antitrust case, but rather, as mentioned, with sole reference to “that” particular case submitted to the Commission.

As a preliminary consideration, the Commission noted that the tissue product manufacturing process is divided essentially into three phases:

- 1.** raw material preparation: wood pulp or waste paper are treated to be processed in the paper machine;
- 2.** production of parent reels (base paper) from the treated pulp or waste paper;
- 3.** transformation of the parent reel into the various end products.

That said, given that among the parties' activities there was some overlap in the supply of parent reels and processed products, the Commission identified (in a more or less definitive way) the following relevant product and geographic markets for the case under scrutiny.

I. The relevant product market

a. The market for tissue paper parent reels

The Commission observed that the parties to the proposed transaction produced parent reels, mainly to meet the internal needs of the companies, and only in small part for the sale to third party processors.

During periods when internal production was insufficient, the parties acquired parent reels from other manufacturers. The Commission concluded that the relevant product market for paper tissue parent reels consisted of the supply of parent reels to third parties.

b. The market for processed paper tissue products

The Commission found that the buyers of the finished products for end use are both retail distributors (consumer goods, so-called Consumer distribution channel) and distributors in the community sector (so-called Away From Home distribution channel which includes hotels, restaurants, catering firms and other corporate customers). Although some products are sold both as finished tissue products for the consumer (i.e. for household use) and as products for the public, the Commission noted that the two consumer and AFH uses constitute separate product markets, given the difference in distribution channels and purchasers, and, therefore, in consideration of the non (significant) substitutability of the two types of product by the two different groups of purchasers.

b.1. Consumer channel markets

The case we are talking about also gave the Commission a way to verify that within the consumer distribution channel there are essentially four major product categories, namely (i) toilet paper, (ii) kitchen towels, (iii) handkerchiefs

and facial tissues, (iv) napkins. In this regard, the Commission noted that such products should be considered as separate product markets in that they differ in price, physical characteristics and end use.

The Commission also points out that within each product market for consumer goods there are both branded products and private label products (hereafter “private label”). Based on a long, in-depth analysis, the Commission deemed that, in this case, branded and private label consumer products should be considered two separate relevant product markets. Nevertheless, the Commission also took steps to analyse the competitive impact that the notified operation would have if the branded products and private label products had constituted a single relevant product market, and concluded that the assessment of the notified transaction in terms of competition would have led to the same result regardless of the distinction between branded and private label products. For this reason, it did not need to adopt a definitive position on the matter, leaving the question open.

b.2. AFH channel markets

For the AFH channel in the case under scrutiny, similarly to the consumer channel, the Commission was able to verify that within this distribution channel there are essentially five major product categories, namely (i) *toilet paper*, (ii) *hand towels*, (iii) *wiping paper*, (iv) *healthcare products (such as medical drape sheets, wipes for washing patients etc.)*, (v) *napkins*. In this respect, as seen for the consumer channel, the Commission noted that such products must be considered as separate and different product markets.

Moreover, as for the consumer channel, for the AFH channel the Commission also considered the possible further distinction between branded and private label products. However, unlike what was seen for the consumer channel, the Commission, after pointing out that in the AFH channel the distinction between branded and private label products is less important (because buyers of AFH products normally choose their products on basis of quality and price, and are not influenced by the brand of the supplier) concluded that - in this

case - AFH products, both branded and private label, are deemed to belong to the same relevant product market.

II. The relevant geographic market

a. The market for tissue paper parent reels

The Commission determined that the relevant geographic market for parent reels encompasses at least the European Economic Area (transport costs are significantly lower than for processed products: the compactness of the product enables the supply at least on a European basis).

b. The market for processed paper tissue products

The Commission concluded that all the relevant (sub)markets belonging to the segment in question have a national scale.

Once the relevant market(s) is/are defined, the dominant position may derive from the following factors:

- a.** large market shares held by the Company;
- b.** significant difference between the market shares of the Company and those of its competitors;
- c.** economic and financial power of the Company;
- d.** significant technological advantage over its competitors;
- e.** “upstream” and “downstream” integration;
- f.** availability of a more extensive and better organized distribution network than that of competitors;
- g.** limited access of competitors to the market in question.

All these factors are only *indications* of a dominant position; however, holding a large market share is very significant. In particular, a significant market share proves by itself, aside from exceptional circumstances, the existence of a

dominant position. Such is the case of a market share of 70% or more, where a *presumption* of dominance is accompanied normally by a share of over 40%.

Also note that the rules in question may also apply to a *plurality* of companies connected *together* (for example, by agreements or cross-holdings) that together hold a dominant position, if the alleged “abusive” behaviour is put in place more or less in parallel by several companies (so-called collective dominance). This is, in particular, the case of an oligopolistic market.

It is essential that the Group preliminarily identifies every market in which it may be considered to have a dominant position, since if this happens, the application of the rules means that the Company may not enjoy the freedom of behaviour towards competitors, customers and suppliers that would otherwise be normal. In these markets, wherever there is conduct that may have restrictive effects on competition, it is necessary to perform a careful analysis of the situation, in order to ascertain whether there is a risk of abuse.

As for the abuse, this may actually con-

sist of:

- Adoption of unreasonably high prices;
- Systematically taking customers from the competition by selling at artificially low prices, setting them below the average variable costs or the average total costs (so-called “predatory pricing”);
- Barrier to the entry of competitors to the market, forcing customers who want a must stock product to buy it together with another product;
- Unjustified refusal to sell to certain customers: this would be the case in which company A (dominant) systematically refuses to provide the products and/or services required by company B, for which the product is essential to the production cycle; B cannot operate at all or cannot operate at an affordable cost in the absence of A’s product and there are no alternatives. Company A also accepts orders of the same type from other customers.
- Offers of “loyalty discounts” to customers provided they meet

their entire requirements from the dominant company and accept the prohibition to purchase from competitors: this is the case when a dominant company in a specific market offers systematic discounts only to some of its customers, obliging them to stock one or more specific products always and only from the dominant company in question;

- Unjustified refusal to provide customers and/or competitors with an intermediate product (e.g. semi-finished) which is indispensable to compete in one or more downstream markets;
- Imposition of a sales price of a so-called “input” product that is indispensable for their competitors to the point of affecting the resale price of the derivative, depriving competitors of a profit margin in the downstream market (so-called “margin price squeeze”): to illustrate the concept, consider the

scenario where, in a market where only one bakery is dominant in the supply of flour, it decides to set the purchase price for a long period of time to levels so close to the production cost of the competitors that it does not allow competing bakeries any actual profit from the sale of the bread they make, thus driving them to cease production of those products;

- Unjustified refusal to give competitors access to certain essential or indispensable infrastructures (not replicable or substitutable) to operate in a given market (infrastructures controlled by the dominant company). The refusal of a company that ran a port and a fleet of ships to give a competing fleet a dock for mooring at the port was deemed abusive. Note that in this case the port was not operating at capacity; instead the port had docks that were free but were not made available to the competitor.¹

¹The fact remains, however, that those who intend to carry out a certain activity should have a company structured so as not to have to depend on others. It would be easy for any company to ask a competitor for access to its infrastructure, since this would mean being able to avoid sustaining a long-term investment. A limit for this abusive behaviour was reached in another case in which a trader who was selling newspapers had devised a system of home delivery of newspapers using vans. A potential competitor asked to use its

Examples:

- ▶ The European Commission deemed various agreements entered into by a well-known manufacturer of dietary vitamins with its customers in breach of anti-trust rules: these agreements, the Commission pointed out, contained specific and stringent exclusivity clauses, the effectiveness of which was enhanced by a significant “loyalty discount,” which was paid by the manufacturer to customers through semi-annual payments as reimbursement of the discount percentages on the prices of the items. In this case, it was deemed that the loyalty discounts were anti-competitive when they induced customers to commit exclusively to a dominant company;
- ▶ The European Commission ruled against a manufacturer of cardboard packaging for liquid foods because it was abusing its dominant position by imposing on its customers the purchase of machinery for packing foods using its packaging as a condition for the supply of the packaging; at the same time the manufacturer adopted a policy of predatory pricing, making it impossible/difficult for other manufacturers to make competing offers;
- ▶ The European Commission convicted for abuse of dominant position through the imposition of predatory pricing a chemical company that systematically sold its products at a lower price to the customers of a competitor, while it continued to sell the same products to its own customers, but at a higher price;
- ▶ The European Commission sanctioned (with a fine of about 1 billion EUROS) a well-known manufacturer of integrated circuits and microprocessors for personal computers that practised system-

vans to home-deliver newspapers, and the operator had refused access to the vans. When they reached the ruling, the concept of the essential nature and non-duplicability of the resource was made clear. In the case of the port, the dependent position was due to the nature of things (the port cannot be duplicated and is an essential facility), and the port operator was deemed to have a special responsibility. A different approach was taken for the vans, which instead could well be duplicated by means of an investment.

atic “loyalty discounts” for customers who exclusively bought its products;

an unwarranted exclusion of competitiveness and/or individual competitors in the market.

In summary, if the Group should find itself in a dominant position on one or more of the relevant markets in which it operates, the utmost attention would have to be given to its commercial strategies, by not engaging in conduct that could be interpreted as directed to

In this respect, any situation where it is believed that the Group/company/brand in question holds or has reached or may hold a share in a relevant market of at least 30% must be carefully evaluated by the Corporate Legal Department.

7. **RELATIONS WITH COMPETITORS**

At professional and social events (e.g. fairs, dinners, conventions), Group employees can interact with the competition. Such situations are not prohibited, but must be kept to a minimum.

If any employees who are, for whatever reason, involved in a conversation with representatives of competitors realize that the topics become relevant in whole or in part to the topics covered by this Code, they must immediately and clearly express their dissent

to continue these discussions without encouraging their continuation, and assess whether the continuation of the events requires them to abandon the conversation by declaring that the Group is in disagreement with the topics being covered. Not actively participating is not enough to prevent potential negative consequences: if the conversation is contrary to competition principles, they must stop listening as soon as they become aware of its content.

8. LANGUAGE IN INTERNAL AND EXTERNAL COMMUNICATIONS

Group employees are required to adopt extreme caution in their use of language in any communications, both internal and external, related to the issues set out in this Code; any failure to comply with these precautions could lead to serious damage to the Group if, during the course of inspections (including without notice) by the competent Authorities, internal communications are found whose content may induce the Authorities in question to

conclude that there is, even potentially, illegal conduct by the Group.

Where one believes they have written/received internal/external communications that do not comply with the above, and in case of doubts about the content of communications and/or the adoption of specific modes of communication, the Corporate Legal Department must be contacted to receive operational guidance and suggestions.

APPENDIX

Relevant European Union legislation

European Union legislation on the protection of competition is set forth in the Treaty on the Functioning of the European Union (TFEU -, formerly the Treaty of the European Communities - signed in Maastricht on 7 February 1992, amended most recently by the Treaty of Lisbon on 13 December 2007).

In the TFEU, the following provisions are of vital importance:

1) Article 101 Restrictive practices

(ex Article 81 TEC)

1. *The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which:*
 - (a) directly or indirectly fix purchase or selling prices or any other trading conditions;*
 - (b) limit or control production, markets, technical development, or investment;*
 - (c) share markets or sources of supply;*
 - (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;*
 - (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.*
2. *Any agreements or decisions prohibited pursuant to this Article shall be automatically void.*
3. *The provisions of paragraph 1 may, however, be declared inapplicable in the case of:*
 - any agreement or category of agreements between undertakings,*
 - any decision or category of decisions by associations of undertakings,*

- *any concerted practice or category of concerted practices,*

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

- (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;*
- (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.*

As concerns possible further exemptions from the ban, Article 3 of Regulation (EU) 330/2010 establishes the market thresholds below which Article 101 (1) TFEU does not apply:

1. The exemption provided for in Article 2 shall apply on condition that the market share held by the supplier does not exceed 30 % of the relevant market on which it sells the contract goods or services and the market share held by the buyer does not exceed 30 % of the relevant market on which it purchases the contract goods or services.

2. For the purposes of paragraph 1, where in a multi party agreement an undertaking buys the contract goods or services from one undertaking party to the agreement and sells the contract goods or services to another undertaking party to the agreement, the market share of the first undertaking must respect the market share threshold provided for in that paragraph both as a buyer and a supplier in order for the exemption provided for in Article 2 to apply.

2) Article 102 Ban on the abuse of a dominant position;

(ex Article 82 TEC)

Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;*
- (b) limiting production, markets or technical development to the prejudice of consumers;*

- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;*
- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.*

Furthermore:

■ Council Regulation 1/2003 pertains to the application of the competition rules laid down in Articles 101 and 102 TFEU

and thus lays down detailed rules for investigations, inspections and the imposition of penalties, by the European Commission, vis-à-vis the measures contained in these articles. The Regulation also sets forth the main provisions for the coordination of Community legislation with regulations in individual Member States.

■ Commission Regulation 330/2010 on the application of Article 101 (3) TFEU to categories of vertical agreements and concerted practices strengthens the provisions of Council Regulation 1/2003 on the types of agreement which may be sanctioned and introduces some specific exemptions from the application of Article 101 TFEU.



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