

# ANTITRUST CODE OF CONDUCT OF THE TIM GROUP





Compliance with competition rules is an integral part of TIM's identity and the industrial role our Group plays in Italy and Brazil. Operating correctly, transparently, and fairly on the market is much more than a regulatory requirement; it is an essential prerequisite for building trust, generating sustainable value, and contributing to the development of a competitive and robust digital ecosystem.

On December 11, 2025, the new version of the Group's Antitrust Code of Conduct, which incorporates the most recent guidance from the Italian Competition Authority (AGCM) and adopts European and national best practices, was brought to the attention of TIM's Board of Directors. This update comes at a time of profound transformation: Our industrial perimeter has changed, the competitive landscape has evolved and the sector more generally is experiencing a phase of strong consolidation. In this scenario, strengthening the protection of competition principles means strengthening the quality of our way of doing business.

With this new document, TIM clearly renews its commitment: it strengthens antitrust compliance across all corporate activities through clear rules and timely operational guidance; it strengthens colleagues' awareness of the importance of competition and its concrete impact on daily choices; it provides a practical guide to prevent behaviours, actions, or omissions that could expose the Group to risks, also potential in nature, of violation, also thanks to examples, cases, and references useful for guiding decisions in real operational situations.

Every TIM manager, employee, and collaborator is called upon to do their part. Antitrust compliance is a widespread responsibility that affects how we make decisions, manage business relationships, compete in the marketplace, and represent TIM externally. This is how we protect the Group's reputation, the industrial credibility built over time, and the trust of customers, partners, investors, and institutions. The Code is intended as a daily work tool, to support TIM's people in promptly identifying risks and managing them appropriately, and as a solid, clear, and operational reference, fully integrated into the Group's governance system.

TIM's strength is built on the consistency of its values, rules, and behaviours. This Code embodies all this concretely: it guides our decisions, protects the Group, and strengthens the credibility of our industrial role. It is the foundation that will allow us to pursue our transformation and growth path.

Alberta Figari

Presidente

# Antitrust Code of Conduct of TIM Group

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## Introduction

Group companies conduct their activities in accordance with the values and principles set out in the Code of Ethics and Conduct and the 231 Organization Model, in the belief that a shared vision of ethics in the day-to-day conduct of business is an essential prerequisite for responsible and sustainable growth. In this regard, Group companies reject and condemn recourse to unlawful or otherwise improper conduct in pursuit of their business objectives. In particular, in the conduct of their activities, Group companies operate in compliance with the legislation and principles protecting free competition and, in line with the values embodied in the Code of Ethics and Conduct, promote fair competition that supports the pursuit of corporate objectives while respecting the interests of other market players, customers and stakeholders in general, refraining from prohibited, collusive, restrictive, abusive or otherwise improper conduct and ensuring compliance with the applicable regulations. Group companies are committed to achieving their objectives on the basis of the quality, safety, and innovation that characterise their products and services.

This document also serves as a reference in dealings with Group suppliers, who, through a specific contractual clause, already accept the principles set out in the Group Code of Ethics and Conduct.

In order to comply with antitrust legislation, Group companies adhere to the following general principles: (i) they define and pursue their commercial policy in complete autonomy with respect to competitors in the market; (ii) they operate exclusively on the basis of their own strategic and commercial decisions; (iii) they do not engage in unlawful practices, such as agreements restricting competition, exchanges of sensitive information with competitors, or abuses of dominant position; (iv) they refrain from making statements that damage the image of competitors.

This Code of Conduct was last updated in November 2025 to reflect the significant changes that have occurred in the telecommunications sector and, more specifically, in the corporate and organisational structure of the Group. Following the separation and subsequent disposal of the fixed access network, which took place during 2024, the competition risk profile to which Group companies are exposed has undergone significant change. The loss of the dominant position historically held in certain markets, as a vertically integrated operator, has led to a reduction – although not an elimination – of the circumstances in which TIM could, in the abstract, be in a position to operate in a manner significantly independent of competitors and consumers. At the same time, the competitive environment has undergone profound change, particularly in the fixed and mobile retail services markets, following the consolidation process between two major competing operators.

This evolution has resulted in a reduction in the competitive pressures to which Group companies are subject, with direct impacts on the operations of the corporate functions.

## Beneficiaries

The addressees of the Antitrust Code of Conduct are the corporate bodies and employees of TIM, the unlisted Italian companies of the TIM Group, and its two subsidiaries incorporated under San Marino law, Telecom Italia San Marino S.p.A. and Telefonía Mobile Sammarinese S.p.A. (hereinafter the "TIM Group" or the "Group"). This Code constitutes a framework of reference for the Group's foreign companies<sup>1</sup>.

## Purpose and scope of application

Ensuring full compliance with competition law is an integral part of corporate culture and of the operational decisions made on a daily basis by Group companies. The latter are aware of the commercial, financial, reputational and operational risks that would arise from the absence or inadequacy of rules and organisational safeguards in antitrust matters, and consider it essential that personnel know and understand the basic concepts of competition law applicable in the context of the commercial activities carried out.

The most effective way to ensure full compliance with competition law is to provide personnel with adequate knowledge of antitrust regulations and their practical application, enabling them to recognise and consequently avoid potential risks.

This Antitrust Code of Conduct (hereinafter also the "Antitrust Code" or the "Code") therefore aims to provide a systematic framework of reference on competition law for all Group companies. In particular, the Antitrust Code is intended to:

- provide a summary description of the principles of antitrust legislation and the main types of infringement of competition law;
- identify, in the light of the Group's activities and the precedents (including those involving the Group) of the Authorities responsible for competition protection, the areas where there is a risk of potential infringements, in order to prevent them and enable timely intervention by the relevant corporate function (hereinafter, the "Antitrust Function").

Failure to comply with the Code risks seriously jeopardising the reputation and success of the TIM Group and may result in very significant penalties. For this reason, the TIM Group has decided to:

- broadly disseminate the Code, making it accessible to all personnel and providing adequate and regular antitrust training programmes;
- ensure periodic review and updating of the Code to adapt it to developments in competition law;

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<sup>1</sup> To be adopted subject to adaptation to local regulations, processes and organisational structures.

- provide the necessary support to clarify the interpretation and implementation of the Code through the Antitrust Function;
- establish a system of disciplinary sanctions to punish any infringements;
- adopt specific internal procedures for reporting, assessing and handling any infringements; and
- ensure the confidentiality of the identity and professional protection of those who report potential infringements, in compliance with legal obligations;
- provide for periodic compliance assurance activities on processes exposed to antitrust risks, with the objective of verifying the effective application of the Code, preventing non-compliant conduct and ensuring the continuous improvement of the internal control system.

## Statutory references

[1] Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU)

[2] Law No. 287 of October 10, 1990

## Description of the process and responsibilities

### *GENERAL PRINCIPLES*

In line with the provisions of the Code of Ethics, any conduct that infringes antitrust law is prohibited, without exception.

The objectives of antitrust legislation are:

- to ensure that markets operate according to competitive principles, constraining the conduct of undertakings in a dominant position and prohibiting agreements restricting competition;
- to protect freedom of enterprise and consumers, by promoting efficiency, innovation and the development of competition based on competitive prices and better products (or services).

Competition law therefore prohibits those behaviours and practices which, by reducing competitive pressure through concentrations, abuses of dominant position or cartels, may prevent or hinder the competitive process between operators active in the market.

Defining the relevant market is the first necessary step in assessing whether conduct or a commercial practice may be unlawful under antitrust rules.

The concept of relevant market is specifically related to antitrust analysis and is therefore distinct from the notions of market used in other contexts, including the regulatory context; it is the result of the combination of two variables: the product market and the geographical market relevant to the case under examination.

The product market comprises all goods and services that are interchangeable or substitutable for the consumer and/or other operators, by reason of their characteristics, prices and intended use. The geographical market may be defined as the territorial area in which the conditions of competition are homogeneous with respect to the relevant product.

Antitrust legislation is contained, at European level, in Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU), in numerous Regulations and acts of the European Union institutions and, at national level, in Law No. 287 of October 10, 1990.

It is important to emphasise that, according to established case law, the relationship between antitrust legislation and sector-specific regulation is not one of exclusion and overlap, but of complementarity.

This means that, although competition authorities must take into account the (legal and factual) framework within which operators in the sector (in our case, electronic communications) operate, this does not prevent them from autonomously assessing the conduct of undertakings, such that the application of competition rules is not excluded in cases where regulatory provisions leave open the possibility for undertakings to engage in conduct capable of preventing, restricting or distorting competition.

In complying with antitrust legislation, the addressees of the Code undertake not to engage in the following unlawful practices.

## **UNLAWFUL PRACTICES**

### **A) Agreements**

Agreements (arrangements, concerted practices between competing undertakings and decisions by associations of undertakings) which have as their object or effect the prevention, restriction or distortion of competition in the relevant market are prohibited.

An agreement occurs when two or more undertakings adhere to a common strategy that limits, or is capable of limiting, their autonomous conduct on the market, establishing the lines of their reciprocal action or their activity on the market.

An agreement does not necessarily mean a formal arrangement (e.g., contract, letter of intent, gentlemen's agreement, memorandum of understanding, etc.), but may also derive from uniform and conclusive conduct. Such conduct, falling within the notion of "concerted practice", may manifest itself, inter alia, through parallel behaviour between undertakings, which has no other plausible explanation than the implementation of a shared anti-competitive intent.

An agreement may be in written or oral form, through, for example:

- exchanges of letters / emails / communications;
- conversations held by telephone, during a meeting, an encounter, a working group, including within a trade association;
- exchanges of opinions or information.

In essence, any contact between competitors, even indirect, may generate a risk of infringement of competition rules, especially where it is followed by uniform conduct by those competitors on the market.

Prohibited agreements may be restrictive of competition by their object (when by their very nature they restrict competition and do not require any assessment of actual or potential effects) or by their effect (when an examination of their effects is necessary to assess whether or not they have a negative impact on competition).

Some agreements – which in the abstract fall within the prohibition under examination – may also have pro-competitive effects. For this reason, they may be exempted from the prohibition, but only if they satisfy specific conditions. For the assessment of the potential pro-competitive and anti-competitive effects of an agreement with competitors, distributors or suppliers, it is recommended to consult the Antitrust Function to obtain the necessary clarifications.

### *Types of agreements*

Agreements may be horizontal, when they occur between competitors, or vertical, when they occur between parties who, operating at a different level of the distribution chain, are not competitors for the purposes of the agreement.

#### Horizontal agreements

There are various examples of agreements that may occur between Group companies and their competitors:

- price-fixing agreements: any agreement whose purpose or which may have the effect of fixing, increasing, decreasing or maintaining the price (or individual price components) of products/services offered on the market. The notion of price-fixing also includes coordination relating to discounts, criteria for their application, commissions, as well as indexation or adjustment mechanisms, regardless of whether such agreements are not binding. Coordination on a single price component is sufficient to constitute an anti-competitive alignment, even where the final price is subsequently determined autonomously by each operator;
- market compartmentalisation agreements: any agreement whose purpose is, or which may have the effect of, sharing the market, for example: a) dividing products/services among the various competitors; b) assigning exclusive geographical areas to the participants in the agreement; c) dividing customers or certain classes of customers among the various competitors; or d) agreeing to cease selling products/offering services to certain customers or classes of customers;
- agreements on contractual conditions: any agreement whose purpose or which may have the result of agreeing with competitors the uniformity of contractual conditions relating, for example, to billing and payment methods, additional services offered to customers, suppliers or distributors, renewal and withdrawal terms;
- limitation of production: any agreement whose purpose or which may have the result of fixing, increasing, decreasing, maintaining, stabilising, or limiting the output of the undertakings party to the agreement. An agreement between competitors may also be aimed at limiting market outlets or access, the level of investment and technical development or technological progress in the relevant sector (e.g., in the latter case, by effectively preventing the parties to the agreement from independently undertaking, developing or exploiting projects);

- horizontal discrimination: any agreement aimed at applying different prices, sales or payment conditions to customers in similar situations, or the same conditions to customers in different situations;
- boycott: any agreement aimed at collectively boycotting one or more competitors, in particular newcomers to the market;
- agreements relating to tenders (so-called bid rigging): any agreement whose purpose or effect is to influence the outcome of tenders (public but also private), before or during the tender. For example, agreements by which it is agreed with competitors to: a) participate in a tender or not to participate (e.g., with reference to the second lot of a tender or to a specific geographical area); b) participate on certain conditions (at a certain price, at a higher or lower price than the competitor); c) make an invalid or purely formal bid to allow the award to a competitor; d) submit a bid through a temporary association of undertakings (ATI) or a consortium without a real economic justification; e) use subcontracting to circumvent competitive tendering;
- exchange of commercially sensitive information between competitors, for which see below.

In *the Agreement between operators in the vending sector (I783)*, the Authority sanctioned some operators active in the vending sector for having implemented an agreement restricting competition consisting in the adoption of rules of mutual non-competition.

In *Telefónica and Portugal Telecom (AT.39839)*, the European Commission sanctioned several telecommunications operators for having entered into an agreement restricting competition with the effect of allowing market sharing, by including a non-compete clause in relation to their respective national markets.

### ***The exchange of commercially sensitive information***

Competition law considers unlawful any exchange of information between competitors that reduces the degree of uncertainty about the functioning of the market, thereby facilitating the coordination of their conduct. This case represents one of the most complex violations of antitrust law, which prohibits any direct or indirect contact between competitors, having the purpose or effect of reducing the strategic uncertainty normally present in the market, with reference to the behaviour of the various operators.

Commercially sensitive information includes, in particular, information relating to: a) prices, discounts, margins, production costs, quantities, capacities, contractual conditions other than price (e.g., payment terms), customer lists and their characteristics; b) investments; c) commercial and industrial policies and strategies; d) production/distribution plans, volumes and strategies (e.g., marketing plans); e) distribution conditions; f) research and development activities for the launch of new products and services; g) competitive strengths and/or weaknesses; h) participation in tenders and supplier selection procedures, including bidding methods and conditions.

The exchange of commercially sensitive information occurs both in the case of mutual communication of information between competitors and in the case of unilateral disclosure (e.g., unilateral communication by a competitor of sensitive data, public announcements of price changes, or public invitations to adopt certain behaviours, including during conferences, interviews or meetings, social events, technical roundtables, working committees, etc.).

With regard to exchanges of information, the so-called data sharing phenomenon is also becoming increasingly relevant in recent years. "Data sharing" refers to any form of organised exchange of data between undertakings or for the establishment and management of common databases. It includes data pools established and shared by competitors or their respective customers, as well as data on competitors collected by trade associations or market research institutes. Through data sharing agreements, the information is aggregated within a common database to which the participating undertakings have access. By accessing such a database, an undertaking may derive information about a competitor's current or past behaviour or may obtain elements that may indicate the other's future behaviour.

Sharing certain types of information (for example, information that enables companies to generate efficiencies and offer better services to customers and consumers) can also produce pro-competitive effects. For example, public information, aggregated and historical statistical data, and information relating to individual companies may be shared, provided that such data does not provide any indication of their individual positions. The historical relevance of the information is assessed in relation to the characteristics of the individual sector and/or market involved. It is recommended to consult the Antitrust Function for the assessment of the nature of the information, its significance from an antitrust perspective, and the lawfulness of any exchanges of information.

Exchanges of commercially sensitive information between competing undertakings may take place either directly or through third parties, giving rise to so-called hub and spoke practices. In this arrangement, the intermediary – who may be a customer, a common business partner, a consultant or another third party – acts as a vehicle through which information is disseminated among competing operators. The practice arises where the participants in the exchange are aware, or could reasonably foresee, that the circulation of information takes place through the intermediary, with potentially restrictive effects on competition.

Where an undertaking receives sensitive information relating to a competitor, mere passive participation in the exchange is not sufficient to exclude the existence of an infringement. It is therefore necessary to expressly manifest one's dissent, declaring the intention not to make use of such information in formulating one's commercial policies. Depending on the circumstances, such dissent must be formalised in writing or minuted, in order to document non-involvement in the exchange.

In certain specific contexts – such as participation in cooperation agreements between competitors (see below) or the assessment, negotiation, and execution of concentration transactions – it is necessary to adopt additional measures to mitigate the risk of access to sensitive information. In such cases, the exchange must be limited to information strictly

necessary for the pursuit of the common objective and may be appropriately regulated through the execution of confidentiality agreements and/or the establishment of clean teams, composed of selected individuals isolated from operational functions.

Notwithstanding the above, undertakings retain the right to react intelligently, on an autonomous basis, to the known or presumed behaviour of competitors.

In *Retail sale of cosmetic products (I701)*, the Authority sanctioned several cosmetics manufacturers for having entered into an agreement restricting competition, implemented through an exchange of information and through the coordination of their respective commercial strategies within the context of association meetings.

In *Heat stabilisers (AT.38589)*, the European Commission found a consultancy company liable for an agreement restricting competition, as it had assumed the role of active facilitator of the agreements, collecting, aggregating, and distributing commercially sensitive information among the parties.

### *Cooperation agreements*

Certain agreements between competing undertakings may be lawful where they are functional to achieving efficiencies, such as the joint development of new technologies, the optimisation of investments or the pursuit of benefits directly to the advantage of consumers. The main types include, *inter alia*, research and development, standardisation and sustainability agreements.

The lawfulness of such forms of collaboration cannot, however, be presumed, but must be assessed on a case-by-case basis, verifying that the competitive benefits deriving from the agreement outweigh any restrictive effects. In particular, it is necessary that the exchange of information between the parties be limited to what is strictly indispensable to achieve the common objective, avoiding the unjustified sharing of sensitive data.

In such circumstances, it is recommended to adopt antitrust risk mitigation measures, such as the execution of confidentiality agreements and the establishment of clean teams, composed of individuals isolated from operational functions and responsible for managing sensitive information. For the assessment of the compliance of the agreement and, in particular, of any exchanges of information with antitrust rules, it is recommended to consult the Antitrust Function.

In *Network sharing – Czech Republic (AT.40305)*, the European Commission launched an investigation into a network sharing agreement entered into by the main mobile telephony operators operating in the Czech Republic. The Commission subsequently accepted and made binding the commitments proposed by the parties to address any critical issues identified.

### *Decisions by associations of undertakings*

Antitrust law takes into consideration not only direct forms of agreement between competitors (agreements and concerted practices), but also indirect forms of coordination that may be implemented through associations of undertakings. In this context, collusion between undertakings may be induced or facilitated by trade associations or professional bodies through the adoption of decisions that, while formally addressed to members, in practice have the object or effect of coordinating their competitive conduct.

The notion of association of undertakings relevant for antitrust purposes is rather broad and includes all forms of organisation (e.g. trade associations, consortia or cooperatives).

The essential and indispensable element is the presence of a common structure, a potentially stable and permanent organisation, whose function is to express the collective will of the participating undertakings, thus influencing their individual conduct. It follows, for example, that an entity – even of a collective nature – lacking a decision-making body capable of expressing the common will of the members may not fall within the notion of association of undertakings. The breadth of this notion is intended to prevent undertakings from circumventing competition rules based solely on the form (other than an agreement or concerted practice) in which they coordinate their conduct on the market.

As regards, instead, the notion of "decision", it includes any act, even if not formally binding, which constitutes the expression of the will of the undertakings participating in a given collegiate structure.

The antitrust issues connected with the activities of trade associations may be summarised as follows:

a. In some cases, by facilitating meetings between members, associations could provide an opportunity for members to define and implement agreements restricting competition, a vehicle for coordinating their respective market behaviour in violation of competition law, or a forum for exchanging – even unintentionally – commercially sensitive information. By way of example, conduct harmful to competition could arise in the context of:

- meetings between member undertakings;
- advertising and marketing initiatives;
- certifications or quality standards;
- statistical survey activities: in such cases it is necessary that (i) data collection does not allow, even indirectly, the identification of individual undertakings and their market strategies; (ii) participation in the processing of statistical surveys takes place on the basis of objective and non-discriminatory participation criteria; (iii) the entity responsible for collection is able to guarantee the confidentiality of the data collected and their use only for statistical purposes. The results of the statistical processing must not be subject to observations, modifications or validations by the participants, nor must they be broken down by geographical area or individual operator, in order to avoid the possibility of reconstructing individual information that could alter the normal functioning of the market;
- promotion, sponsorship or endorsement of agreements, accords, arrangements, or protocols that may influence the direct or indirect setting of market conditions or the methods and timing of their development: in such cases, it is necessary to verify in advance whether the text of the agreement is compatible with antitrust rules.

b. In other cases, the association's activities could be at risk of being unlawful, for example by establishing strict membership requirements or working groups whose activities promote standardisation of conduct or by creating databases for sharing commercially sensitive information. In this regard, the following may assume relevance from an antitrust perspective:

- restrictive clauses in articles of association or regulations, as well as in codes of self-regulation or of ethics;
- studies, standard contracts, and guidelines to guide the activities of companies registered in particular market sectors in order to create barriers to entry or to exclude competing companies;
- circulars;

- resolutions;
- recommendations;
- suggestions for contractual clauses.

For further details on the behaviours to adopt in the daily management of one's professional activity and those from which, conversely, it is essential to abstain to avoid potential risks, please refer to the Operational Guidelines for the Application of the Antitrust Code of Conduct.

In *Cardboard prices (I805)*, the Authority sanctioned some companies for having implemented two agreements restricting competition, also implemented through coordination involving the definition of sales prices, production plant downtime and other commercial parameters, as well as an exchange of commercially sensitive information within a trade association.

### ***Vertical agreements***

Vertical agreements are entered into between operators belonging to different levels of the production process and generally enjoy more favourable treatment than horizontal agreements because, by not involving direct competitors, they can lead to efficiency gains and generate pro-competitive effects.

In order to clarify the regulatory framework, the European Commission has introduced a block exemption regulation which exempts from the prohibition certain categories of vertical agreements (and individual clauses thereof), provided that the parties do not exceed certain market share thresholds.

For the assessment of the compliance of vertical agreements with competition law, it is recommended to consult the Antitrust Function.

### ***Hardcore restrictions***

These are contractual clauses with a high anti-competitive potential (so-called hardcore), such as those relating to the fixing of the resale price and those aimed at establishing absolute territorial protection.

The following conduct is always prohibited and causes the loss of the block exemption for the entire agreement:

- resale price maintenance; any agreement (between supplier and distributor) whose object or effect is to impose, directly or indirectly, a fixed or minimum resale price for the products supplied. However, mere non-binding price recommendations are permitted, provided that they do not amount to a fixed or minimum selling price as a result of pressure from, or incentives offered by, any of the parties (e.g., the refusal to grant discounts or supplies in the event of non-compliance with the recommended price);

- market sharing by territory or customer group: any agreement by which the supplier provides limitations, directly or indirectly, on the territory into which, or the customers to whom, a buyer party to the agreement may sell the contract goods or services;
- restrictions imposed by the supplier on the buyer which hinder members of a selective distribution system from selling to end users or to other authorised distributors within the selective distribution network;
- restriction on the sales of spare parts, usually concluded between a spare parts supplier and the buyer – typically an assembler – which requires the supplier not to sell those components as spare parts to third parties, such as end-users, independent repairers, wholesalers or other service providers.

There are also some individual contractual clauses that are excluded from the scope of the block exemption, although this does not result in the exemption being inapplicable to the entire agreement in which they are contained. This occurs, for example, in the case of a direct or indirect non-compete obligation whose duration is indefinite or exceeds five years, or in the case of a non-compete obligation that is tacitly renewable beyond five years.

For further details on the behaviours to adopt in the daily management of one's professional activity and those from which, conversely, it is essential to abstain to avoid potential risks, please refer to the Operational Guidelines for the Application of the Antitrust Code of Conduct.

In *Issues concerning promotional activities in the school publishing market (1848)*, the Authority made binding the commitments aimed at removing the non-compete and approval clauses contained in the contracts stipulated between publishers and editorial promoters, which limited the possibility for these subjects to take on assignments from competing publishers.

In *Guess (AT.40428)*, the European Commission fined a company for including certain anti-competitive clauses in contracts with its distributors. These included, for example, the prohibition on selling online without prior authorisation from Guess.

## ***B) Abuse of dominant position***

The practice of abuse of dominant position is based on two elements: (i) the undertaking must hold a position classified as "dominant" on the relevant market; and (ii) it must have engaged in conduct that can be classified as "abusive exploitation" of that dominant position.

A dominant position exists when an undertaking has such economic power as to enable it to prevent effective competition being maintained on the relevant market, and to behave to an appreciable extent independently of its competitors, customers and ultimately consumers.

The existence of a dominant position on a relevant market can be deduced from various factors, including a large market share (above 40%), a significant difference between a company's market share and that of its competitors, strong economic and financial power (i.e., substantial economic independence from competitors), a significant technological advantage over its competitors, vertical integration, and the presence of barriers to entry (e.g., legal, administrative, etc.).

If an undertaking has a market share exceeding 50%, it is presumed to hold a dominant position.

An undertaking holding a dominant position on a relevant market is subject to a special responsibility not to allow its conduct to impair genuine undistorted competition on the common market. The case law states in this regard that the dominant undertaking must behave in such a way as not to impair, by methods other than those which come within the scope of competition on the merits, the growth of competition in the market.

It is only the abuse of a dominant position that is prohibited by antitrust law, not the mere fact of holding such a position on a given market. It is therefore essential that TIM is aware of the markets in which it holds a dominant position. The notion of dominant position coincides with that of significant market power of a regulatory nature, but a dominant position can also exist in unregulated markets (e.g., the bulk SMS market).

### ***Some types of abusive conduct***

Abuses are traditionally divided into "exploitative" abuse, which includes those cases in which the dominant company manages to extract a monopolistic excess profit by exploiting its market power, and "exclusionary" abuse, which includes those cases in which the dominant company is able to prevent or hinder the market entry, growth, or aggressive competitive initiatives of competing companies.

Among "exploitative" abuses the following may be mentioned:

- excessively burdensome (unfair) prices: even if there is no clear criterion for considering a price to be excessive, a dominant undertaking may be held liable for

charging prices at a level which is not fair, i.e., bearing no reasonable relation to the economic value of the product supplied.

- particularly burdensome (unfair) contractual conditions: are not “fair” when (a) the economic advantage of the company in a dominant position does not have plausible commercial justifications (e.g., clauses that make the payment of the price due subject to the occurrence of a future and uncertain event; clauses that provide for payment for services not rendered); (b) force the contracting undertaking to accept limitations on its freedom of action that are not justified by the nature of the contract;
- binding practices: defined as those aimed at forcing a customer to purchase a product, on the condition that they purchase another or use a certain service that is not functionally connected to the first and independent from it.

The following are considered "exclusionary" abuses:

- exclusivity agreements, which preclude competitors of the dominant undertaking from entering the market (e.g., exclusive purchasing obligations, whereby a customer in a given market must purchase exclusively or to a large extent only from the dominant undertaking). This category also includes abusive rebates, including fidelity rebates: these are rebates granted only where the customer undertakes to obtain all or a significant part of its requirements from the dominant undertaking;
- practices aimed at eliminating or in any case reducing the contestability of one's customer base (e.g., through clauses that provide for long-term contractual obligations and particularly onerous conditions for exiting the contract);
- predatory prices: Predatory pricing occurs when a company implements a sales strategy at "below-cost" prices, which is not justified by reasons of economic efficiency, but rather by the intent to exclude its competitors from the market. In particular, in a first phase, the dominant undertaking lowers prices, suffering losses or foregoing profits, with the aim of foreclosing competitors; in a second phase, after achieving its exclusionary objective, the undertaking raises prices to recoup its losses.
- refusal to deal: this practice includes various types of conduct, such as the refusal to supply products or services, the refusal to license intellectual property rights, or the refusal to provide access to an essential facility (e.g., network infrastructure). For this type of abuse to occur, the refusal must relate to a product or service indispensable for carrying on the requesting undertaking's business. The abusive conduct of a company in a dominant position may consist not only in outright refusal but also in undue delays or other forms of damage to the supply of the product/service, or in the imposition of unreasonable conditions in exchange for the supply (so-called "constructive refusal");
- margin squeeze: Margin squeeze occurs when a vertically integrated and dominant company in the upstream market, in which it controls a resource/service essential for the exercise of economic activity in a downstream market, applies high prices to contractors/competitors active in the downstream market (OLO) who purchase the

essential resource/service and/or applies discounts to end customers that cannot be replicated by equally efficient competitors in the downstream market;

- discriminatory conduct: consists in applying dissimilar conditions to equivalent services in commercial relations with other contracting parties, in the absence of real economic justification. Typical examples of discrimination include prices, terms of sale, and payment terms applied to customers or competitors differently in similar situations (or similarly in different situations) without objective economic justification.
- exploitation of inside information: the unlawful use of information acquired by virtue of one's dominant position may also constitute an abusive practice. In this regard, for example, the use by a vertically integrated dominant undertaking on the retail market of inside information obtained through the wholesale provision of services in upstream markets (e.g., fixed telephone network access and interconnection services), as well as the improper retention of data relating to former customers who have migrated to other operators, may constitute abuse;
- instrumental use of legal remedies for anti-competitive purposes ("sham litigation"): threatening and bringing legal proceedings may constitute an abuse of dominant position if the dominant undertaking pursues them for the sole purpose of hindering the activities of competitors. Similarly, conduct aimed at instrumentally using administrative procedures (e.g., in patent matters) for obstructive purposes towards current and potential competitors may constitute an abuse of a dominant position;
- conduct aimed at influencing, for anti-competitive purposes, the decision-making processes of public authorities through false and/or misleading information (e.g., providing false and/or misleading information to the regulatory authority in order to hinder or delay the implementation of measures suitable for promoting the competitive development of the market);
- conduct aimed at hindering/delaying the completion of public tenders (e.g., the refusal and/or delay by the outgoing operator to provide the information necessary to the contracting authorities to announce the tender procedures for the selection of the new concessionaire and to the competitors to participate in the tender and formulate competitive offers)

The list of abusive conduct set out in this paragraph is not exhaustive.

In *Leadiant Biosciences/Drug for the treatment of Cerebrotendinous Xanthomatosis (A524)*, the Authority imposed sanctions against companies belonging to the Leadiant group for abuse of a dominant position, consisting in the application to the National Health Service of unjustifiably burdensome prices for the marketing of an orphan drug. According to the Authority, this conduct was part of a maliciously pre-planned strategy, which included, among other things, delaying and obstructive conduct in negotiations with AIFA on the reimbursement price of the drug, aimed at reducing the Agency's negotiating power.

### ***C. Abuse of economic dependence***

Pursuant to Article 9 of Law No. 192/1998, the abuse by one or more companies of the state of economic dependence is prohibited. This is defined as a situation in which a company is able to create, in commercial relations with another company, an excessive imbalance of rights and obligations, also taking into account the real possibility for the party suffering the abuse to find satisfactory alternatives on the market.

Abuse of economic dependence may also consist in the refusal to sell or buy, the imposition of unjustifiably burdensome or discriminatory contractual conditions, or the arbitrary interruption of commercial relations.

The Italian Competition Authority (AGCM) exercises its investigative powers, imposing injunctions and sanctions where appropriate, where it finds that the conduct of abuse of economic dependence is relevant for the protection of competition and the market.

Law No. 118/2022 has most recently introduced a rebuttable presumption regarding the existence of economic dependence on the part of undertakings that use the intermediation services of a digital platform, where that platform "*plays a decisive role in reaching end users and/or suppliers, including in terms of network effects and/or data availability*".

Some practices that may constitute an abuse of economic dependence by digital platforms include:

- providing insufficient information or data regarding the scope or quality of the service provided;
- requesting undue unilateral services not justified by the nature or content of the activity carried out;
- adopting practices that inhibit or hinder the use of a different provider for the same services, including through the application of unilateral conditions or additional costs not provided for in the contractual agreements or existing licences.

In *Hera – Gas metering group assignments/Payment terms (RP-1)*, AGCM found an abuse of economic dependence by a company due to the payment terms applied in its contractual relations with suppliers, in violation of the rules on combating late payments in commercial transactions. This conduct constitutes a specific type of abuse of economic dependence.

For more details on the conduct to be adopted in the day-to-day management of professional activities and those from which, on the contrary, it is essential to refrain in order to avoid possible risks, please refer to the Operational Guidelines for the application of the Antitrust Code of Conduct and, in any case, it is advisable to consult the Antitrust Function beforehand.

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To report any conduct in relation to the provisions of the Antitrust Code, please refer to point 4 of the Code of Ethics and Conduct as well as to the "Whistleblowing" procedure which governs the process of receiving, analysing and processing reports, sent or transmitted by anyone, including anonymously.

## Consequences of breach of antitrust law

The consequences of breaching competition rules are significant and include:

- high financial penalties for Group companies (under national and European Union legislation, penalties can reach up to 10% of the total turnover of the company that committed the violation, understood as a group);
- nullity of restrictive agreements (including formalised agreements), entered into in violation of competition rules;
- civil actions (including class actions), for claims for antitrust damages by competitors, client companies and consumers;
- the need to implement structural or behavioural measures, to which the Group must adhere in the conduct of its activities, in addition to legal and regulatory obligations;
- negative effects on the Group's commercial strategy;
- significant reputational and image damage;
- effects on rating, profitability, bank financing, market participation;
- possible negative impact on the prices of securities traded on regulated markets;
- diversion of personnel from business activities;
- high costs for the defence of Group companies.

It should be borne in mind that sanctions may be imposed by the Italian Competition Authority (AGCM) or by the European Commission regardless of whether the unlawful objective of the infringement has not been achieved and the contested conduct has not actually had restrictive effects on competition, since it is sufficient that the Group companies have engaged in conduct capable of distorting competition.

### ***The new powers of the AGCM***

The AGCM's powers were first extended by Legislative Decree no. 185 of 2021 and Law no. 118 of 2022 (Annual Law on the Market and Competition), which, *inter alia*, amended certain provisions of Law 287/1990.

Article 14 of Law No. 287/1990, as amended by Legislative Decree No. 185/2021, now provides that the Authority may:

- carry out inspections not only at the premises, land and means of transport of undertakings or associations of undertakings, but also at any other premises, land or means of transport where the Authority has reason to believe that documents connected with the undertaking and the subject matter of the investigation may be found, including the homes of executives, directors and other members of staff of the undertakings or associations of undertakings, subject to authorisation by a magistrate;
- summon to a hearing representatives of undertakings, business associations, and other legal entities and individuals who may be in possession of relevant information, with the obligation to appear at the hearing.

The Authority may also submit to undertakings and entities, "at any time", and therefore also outside the context of formal proceedings, requests for information and documents deemed necessary for the application of competition law. Where the addressees of such requests refuse or fail to provide the requested information or provide false, misleading or incomplete information, the AGCM may impose a penalty of up to 1% of the total turnover generated in the preceding financial year.

With the entry into force of the Asset Decree (Decree-Law No. 104 of August 10, 2023, converted with amendments by Law No. 136 of October 10, 2023), the legislature introduced a significant innovation regarding market investigations conducted by the AGCM, granting the Authority the power to initiate, following the investigation, a remedial phase where competition concerns are identified that are capable of obstructing or distorting the proper functioning of the market.

In such cases, the Authority may adopt behavioural or structural measures to remove the distortions identified, following notification to the undertakings concerned and publication of the measures adopted in the Official Bulletin and on the Authority's website.

The measures that may be imposed by the AGCM could directly affect the organisational structure or operating methods of the addressees, even in the absence of a formal finding of infringement, constituting *ex ante* regulatory instruments.

### *The leniency procedure*

The leniency procedure provides that, by virtue of the qualified cooperation provided by companies in ascertaining infringements of competition rules, the administrative pecuniary sanction may be waived or reduced for companies that reveal their participation in secret cartels.

### *The settlement procedure*

During an investigation, the Authority may set a deadline within which the parties may declare in writing their willingness to engage in discussions in order to reach a settlement. If such discussions are successful, the Authority may set a deadline within which the parties may submit final settlement submissions containing an acknowledgement of liability and acceptance of the maximum amount of the fine.

If the settlement procedure is successfully concluded in proceedings which do not concern a secret cartel, the Authority will reduce the amount of the fine to be imposed by 20%. If, on the other hand, the settlement procedure is successfully concluded in proceedings concerning a secret cartel, the Authority will reduce the amount of the fine to be imposed by 10%.

## Additional principles

No practice that may be classified as an antitrust offence may be justified or tolerated on the grounds that it is "customary" in the sector in which the company operates.

No addressee of this procedure shall be discriminated against or in any way penalised for having refused to engage in anti-competitive conduct, regardless of whether such refusal has resulted or may result in the loss of a business opportunity for the company.

In the event of breach of this Antitrust Code, of the internal procedures referred to herein and/or of the applicable rules, as well as in the case of the aforementioned discriminatory actions, sanctions/disciplinary measures shall be imposed on those responsible in accordance with the procedures set out in the Code of Ethics, the law and collective agreements and contracts.

## Attachment 1

### *OPERATIONAL GUIDELINES FOR THE APPLICATION OF THE TIM GROUP ANTITRUST CODE OF CONDUCT*

#### *Rules of conduct*

The main rules of conduct to be adopted in the day-to-day management of professional activities, and those from which, on the contrary, it is essential to refrain in order to avoid possible commercial, financial, reputational and operational risks that could arise for the Group companies from failure to comply with the guidance set out below, are indicated below with reference to each type of unlawful practice described in the Antitrust Code of Conduct.

#### *A) Agreements*

##### *Horizontal agreements*

The risk of being involved in anti-competitive agreements – which have as their object or effect the prevention, restriction or distortion of competition in the relevant market – is present on all occasions, whether formal or informal, when dealing with competitors, in both business and social contexts. When dealing with competitors:

DO NOT:

- discuss or agree with competitors on retail or wholesale prices (or individual price components and pricing methods), on the timing of price changes or on other terms and conditions, such as invoicing and payment terms;
- discuss or agree restrictions on the respective strategies and activities with reference to technical developments or investments;
- discuss or agree the exclusion of competitors, customers, distributors or suppliers from the market;
- discuss or agree on any changes (e.g. fixing, increase, decrease) in production/service offering and investment levels;
- agree with competitors the application of different prices, sales or payment conditions to different customers in similar situations, or the same conditions to customers in different situations;
- give access to, exchange, seek access to or discuss non-public or confidential business information with competitors (e.g., prices, discounts, margins, production or distribution costs, quantities, capacity, investments, production/distribution plans, volumes and strategies, profitability, business and marketing programmes, product or service research and development programmes, new product launches, etc.).

DO:

- remember that an anti-competitive agreement does not necessarily have to be concluded in writing; it can take any form (a verbal agreement, a gentlemen's agreement, a tacit understanding);
- determine the price of the service/product and make business decisions independently and on the basis of information obtained autonomously;
- act independently on the market and on the basis of one's own information;
- assess the compatibility of contractual initiatives and partnership arrangements with competitors with antitrust rules, consulting the Antitrust Function;
- avoid any contact that involves a direct or indirect exchange of commercially sensitive information concerning Group activities;
- assess the sensitive nature of information from an antitrust perspective and the lawfulness of any communications involving competitors, consulting the Antitrust Function;
- before taking part in any meeting, committee, working group or technical forum with competitors, ensure that there is a legitimate purpose and that the appropriate conduct is identified, consulting the Antitrust Function; Following the meeting, carefully verify that what was discussed has been correctly recorded in the minutes and, in case of manifest non-compliance with antitrust law, consult the Antitrust Function;
- document the sources of information legitimately acquired (e.g., through retailers), noting, for example, the date of acquisition and origin of the information, so as to be able to demonstrate, if necessary, that possession of certain data does not derive from unlawful contacts with competitors.

### *Participation in associations*

DO NOT:

- participate, actively or passively, in particular during association meetings, in any form of exchange of commercially sensitive information relating to the activities of one's own undertaking or competitors;
- share sensitive information during social events on the sidelines of association meetings;
- provide sensitive information (for the purpose of compiling statistics) to associations or other entities acting on their behalf that do not guarantee the confidentiality of the data.

DO:

- participate in meetings only after having verified the agenda, possibly requesting clarifications on potentially sensitive topics, consulting the Antitrust Function;
- leave the meeting if doubts arise about the compatibility of the discussion with antitrust rules (ensuring that this is duly recorded in the minutes), inform the Antitrust Function and send a note to the association mentioning what occurred;
- If any doubts arise, verify the compliance of an association's operations with antitrust regulations with the Antitrust Function.

### *Exchange of information*

Not all exchanges of information between competitors are in themselves unlawful; for this reason it is necessary to assess on a case-by-case basis the nature of the information and the context in which the exchange takes place. In any case, the general principle to keep in mind is that information should not be exchanged between competitors unless necessary. Where such exchange takes place, it is essential to adopt the following precautions:

Direct exchanges of information with competitors

DO NOT:

- share commercially sensitive information with competitors (e.g. prices, discounts, margins, production or distribution costs, quantities, capacity, investments, production/distribution plans, volumes and strategies, profitability, business and marketing programmes, product research and development programmes, new product launches, etc.), regardless of the means of communication used (email, telephone calls, meetings, WhatsApp, etc.);
- leave unanswered any emails concerning commercially sensitive information received from a competitor (see below, "do" section);
- participate in any meeting, forum, working group, committee, social event or initiative if they involve discussions that are unlawful from an antitrust perspective.

DO:

- be aware that the risk of an unlawful exchange of commercially sensitive information increases in concentrated markets characterised by the presence of a limited number of operators;
- refuse to discuss commercially sensitive matters in any context, including informal ones. If you receive commercially sensitive information by email, reply in writing stating that

you are not interested in receiving it and politely ask the competitor to stop sending you such emails;

- keep records of discussions or meetings with competitors;
- immediately leave meetings or encounters involving unlawful discussions and ensure that the departure/objection is recorded in the minutes of the meeting;
- inform the Antitrust Function in writing of what has occurred.

Acquisition of competitors' commercially sensitive information through third-party sources

DO NOT:

- contact a competitor to discuss/verify/ascertain whether the information received from suppliers/retailers is true and reliable;
- provide, or attempt to provide, sensitive information to a competitor through common suppliers/retailers.

DO:

- keep a written record of the source of information received;
- in case of doubt, contact the Antitrust Function.

### ***Participation in a tender***

DO NOT:

- discuss the merits of the tender with competitors before or during participation in the tender;
- send emails and/or messages to competitors concerning the tender in which you intend to participate;
- share or provide any type of information about your bid to competitors;
- discuss and/or agree with competitors on the fixing of prices and/or technical specifications of the bid;
- agree with competitors on strategies to allocate individual lots subject to tender (e.g., by not submitting any bid or by submitting so-called cover or sham bids);
- submit a bid through a temporary consortium of undertakings (ATI) if you have the technical requirements and economic capacity to participate individually;

- discuss or otherwise receive or exchange information with undertakings participating in a tender called by a competitor regarding the technical and economic conditions of bids to be submitted or already submitted.

DO:

- formulate your bid independently based on lawful sources of information;
- keep all documents proving that the bidding strategy responds to objective and independently identified reasons (economic, financial, organisational, operational) and that the bid submitted is cost-oriented;
- in the case of a prospective bid through a temporary consortium with competitors, contact the Antitrust Function in advance;
- in the case of a prospective bid through a temporary consortium with non-competitors, contact the Antitrust Function in advance if in doubt.

### ***Vertical agreements***

Vertical agreements between operators at different levels of the production chain may generate pro-competitive effects on the market and therefore generally enjoy more favourable treatment than horizontal agreements. Nevertheless, in order to avoid antitrust risks, the following precautions must be adopted in relation to the sale of products and accessories:

DO NOT:

- impose minimum or fixed prices on retailers;
- fix the retailer's margin or the maximum level of discounts that the retailer may offer from a set price level;
- make the effectiveness of a contract conditional upon the retailer's compliance with a given resale price level;
- if a retailer communicates its pricing intentions to you, transmit the information received to another competing retailer;
- impose restrictions on passive sales by retailers.

DO:

- assess the compliance of contractual initiatives with competition rules with the assistance of the Antitrust Function.

## B) *Abuse of dominant position*

The mere fact of holding a dominant position in a given market is not in itself prohibited by antitrust law, which only prohibits the abuse of such a position. It will therefore be necessary to pay the utmost attention to the conduct of the Group companies in order to avoid antitrust risks. To this end, it is first necessary to be aware of the markets in which Telecom Italia holds a dominant position. These include those in which Telecom Italia has significant market power. However, a dominant position may also exist in unregulated markets (e.g., the bulk SMS market).

In markets where Telecom Italia holds a dominant position:

DO NOT:

- apply prices or other contractual conditions in a different or discriminatory manner without economic and/or commercial justification, except with explicit prior approval from the Antitrust Function, where the conditions for legality are met;
- make the customer's purchase of a product/service conditional upon the purchase of another product or service that is not functionally related and/or is independent of the first;
- impose exclusive purchasing obligations or grant fidelity discounts to customers on condition that they commit to purchasing products/services from Telecom Italia for all (or most) of their requirements;
- apply below-cost prices;
- provide a service at an excessively high price to customers – who are competitors in the downstream market – and/or charge prices to end customers that cannot be replicated by efficient competitors;
- apply particularly onerous contractual conditions without economic and/or commercial justification, or charge fees for services not rendered;
- refuse to supply an essential product/service to a purchaser to compete in downstream markets or engage in activities that delay or make it more onerous to obtain the product/service, without economic and/or commercial justification;
- engage in pre-emption and lock-in activities, i.e. anti-competitive commercial policies (non-replicable prices, long-term contractual constraints, exit penalties, etc.) to pre-emptively capture customers, both in mature markets and in new market segments, or to eliminate and/or reduce the contestability of the customer base, with the aim of discouraging and/or otherwise hindering the entry of new players into such markets;
- improperly use and/or retain privileged information held exclusively by virtue of being the incumbent operator or obtained through activities in a wholesale market, in order to obstruct and/or limit competition in a retail market;

- use legal actions and administrative procedures instrumentally for the sole purpose of obstructing and/or delaying the entry of new players into the market, or of harming competitors;
- engage in activities aimed at influencing the decision-making processes of public authorities for anti-competitive purposes, by providing false and/or misleading information, or activities aimed at obstructing and/or delaying the conduct of public tenders.

DO:

- consult the Antitrust Function in case of doubt about the existence of a dominant position of Telecom in a given market;
- always consult the Antitrust Function for explicit prior approval before adopting a commercial strategy that involves a price increase for products/services offered on the market;
- provide wholesale services to competing operators in the downstream market (OLOs) on the same technical and economic conditions with which they are provided to the retail divisions of the Group companies and without any discrimination;
- refrain from engaging in conduct similar to that already negatively assessed by the AGCM in convictions and follow the guidance provided by the Antitrust Function to ensure compliance with the cease-and-desist orders contained in such decisions (as, for example, in case A500B in which the Authority ruled that the conduct of TIM in the A2P (Application to Person) SMS market, consisting of a margin squeeze practice against competitors, constitutes an abuse of dominant position).

To report suspected conduct or alleged violations of the Antitrust Code, please refer to the "Whistleblowing" procedure which governs the process of receiving, analysing and processing reports, sent or transmitted by anyone, including anonymously.

## Annex 2

### *IN-DEPTH ANALYSIS OF THE CASE LAW EXAMINED*

The following is an analysis of the precedents of the Italian Competition Authority (AGCM) and the European Commission, briefly referred to in the Code, in order of mention, in order to highlight their practical scope and operational implications for the interpretation and implementation of the principles contained therein. This analysis is of practical importance as precedents constitute an essential reference for guiding compliance policies, defining internal procedures in line with best practices and reducing the risk of conduct liable to sanctions, thus ensuring constant alignment with regulatory requirements.

#### 1) *Agreements*

##### *Horizontal agreements*

AGCM

I783 – Agreement between operators in the vending sector

By Decision of June 8, 2016, the Authority found the existence of a restrictive agreement between certain operators active in the automatic distribution (vending) sector, aimed at restricting competition through the adoption of rules of mutual non-aggression and customer exchanges.

The agreement took the form, in particular, of a customer non-solicitation agreement between "friendly" competitors, consisting of mutual abstention from contacting each other's customers and from responding to any requests from such customers. Such conduct would have manifested itself both in bilateral negotiations with individual customers and in public and private competitive procedures, with the aim of preserving the pre-existing customer portfolio.

The agreement also provided for a cross-reporting system of cases in which dissatisfied customers approached a "friendly" competitor. In such circumstances, the parties activated a compensation mechanism, based on a debit/credit system between the incoming operator and the outgoing or reporting operator, which resulted in the transfer of equivalent customers.

The mechanism described had the effect of preserving the pre-existing commercial balance, hindering the real contestability of the market and impeding the normal competitive process between undertakings.

EUROPEAN COMMISSION

AT.39839 - Telefónica and Portugal Telecom

By Decision C(2013) 306 final, adopted in 2013, the European Commission found the existence of a restrictive agreement in violation of Article 101 TFEU between Telefónica and Portugal Telecom.

The agreement took the form of the insertion of a non-compete clause in the share purchase agreement concluded on the occasion of Telefónica's acquisition of exclusive control of the Brazilian mobile services operator Vivo, previously jointly held by the parties.

Under this clause, each of the parties undertook to refrain from participating or investing, directly or through its subsidiaries, in projects in the telecommunications sector that could have been in competition with the other party in the Iberian market for a period of approximately 15 months.

The Commission found that this clause constituted a market-sharing agreement capable of excluding or limiting competition in the respective national markets. Contrary to the parties' submissions, the Commission found that the clause could not be considered ancillary to the acquisition transaction, as it was neither necessary nor directly related to the implementation of the share purchase agreement relating to Vivo.

### ***Exchanges of commercially sensitive information***

AGCM

I701 – Retail sale of cosmetic products

By decision of July 7, 2010, the AGCM found the existence of a restrictive agreement between the main producers of cosmetics distributed through retail sales.

The contested conduct consisted of the exchange of information and coordination of commercial strategies during association meetings in which the main producers of personal care products met (in particular: cosmetics and detergents). During these meetings, after the presentation of a sector study on market trends, a "round table" followed in which each producer reported the average percentage of list price increase just applied or planned, as well as the main commercial indications relating to the state of negotiations between producers and distributors, some general indications regarding discounts and bonuses granted to distributors (such as, for example, the aggregate discount percentage requested in annual negotiations with large-scale retail operators), as well as information about any problems arising from the entry of new companies into the market.

The exchange of such information was aimed at limiting competitive confrontation within the market as competitors were able to align their commercial strategies in a general and constant manner, as well as to agree on increases in their list prices above annual inflation rates.

### ***Hub and spoke practices***

EUROPEAN COMMISSION

## AT.38589 - Heat stabilisers

By Decision C(2009)8682 final, adopted in 2009, the European Commission found the existence of two restrictive agreements in the heat stabilisers sector, in violation of Article 101 TFEU. The sanctioned conduct consisted of price fixing, market and customer allocation, as well as systematic exchange of commercially sensitive information between the undertakings participating in the cartel.

Among the sanctioned parties was also AC-Treuhand, a consulting company not directly active in the heat stabilisers market, but held liable as an active facilitator of the agreements. The Commission recognised the decisive role of the company in coordinating and managing the exchange of confidential information, having collected, aggregated and redistributed in disaggregated form detailed data relating to sales, market shares, pricing policies (including future strategies) and commercial performance of the undertakings involved.

In addition, AC-Treuhand monitored compliance with the collusive agreements and provided logistical and organisational support for meetings between the parties, also intervening as a moderator in case of disagreements. In light of such conduct, the Commission found that the company played a central role in maintaining the collusive equilibrium, acting as a structured platform for the exchange of information between competitors, with significant effects on the reduction of competitive uncertainty and the distortion of the normal functioning of the market.

### *Cooperation agreements*

EUROPEAN COMMISSION

AT.40305 - Network sharing – Czech Republic

By Decision C(2022) 4742 final adopted in 2022, the European Commission made binding the commitments proposed by T-Mobile and its parent company, Deutsche Telekom, as well as by CETIN, O2 Czech Republic a.s. ("O2") and their parent company PPF Group N.V. ("PPF Group"), in relation to horizontal network infrastructure sharing agreements concluded between the parties, active in the telecommunications sector in the Czech Republic.

Although such agreements were potentially capable of generating efficiencies in terms of cost reduction and improvement of service quality, the Commission, in its preliminary assessment, identified certain critical aspects likely to restrict competition. In particular, a possible reduction in the parties' capacities and incentives to invest autonomously in network infrastructure was highlighted, with negative effects on T-Mobile's and O2's ability to compete in the retail and wholesale mobile telecommunications services markets.

Such agreements would also have resulted in the non-development of the 2100 MHz band in Eastern Czech Republic by T-Mobile due to certain infrastructure limitations in the area managed by CETIN, as well as a reduction in the individual flexibility of the parties in developing the 1800 MHz band, as capacity extensions on that band were tied to joint network planning, without the possibility of significant autonomous interventions.

The Commission also found the existence of disincentives to unilateral network development, arising from: (i) penalising financial conditions, as the main operator charged the guest operator for network upgrades at a price higher than the actual cost of the upgrades; (ii) an exchange of information between the parties exceeding what was strictly necessary for the operation of the agreements.

The commitments proposed by the parties – concerning the modernisation of networks, the revision of financial conditions for unilateral developments, the limitation of information exchanges and the modification of certain contractual clauses – were considered by the Commission to be suitable for resolving the competition concerns that emerged in the preliminary assessments.

### *Decisions of associations of undertakings*

AGCM

1805 - Corrugated cardboard prices

By decision of July 17, 2019, the Authority found and sanctioned two different restrictive agreements prohibited under Articles 2 and 3 of Law No. 287/1990 and Article 101 TFEU. (i) an agreement aimed at limiting competitive confrontation between operators in the market for the production and marketing of corrugated cardboard sheets and (ii) an agreement aimed at limiting competitive confrontation between operators in the packaging market.

As regards the first agreement, the Authority found that a number of undertakings had entered into an agreement to fix the selling prices of corrugated cardboard, in particular by non-vertically integrated box makers, and to determine production plant shutdowns. Coordination among the corrugated cardboard producers would have taken place through meetings between company leaders, which would also have involved trade associations, or during telephone contacts. The guidance received from company executives was then developed in regional meetings.

As regards the second agreement, referred to as the 'packaging agreement', it concerned the fixing of selling prices for corrugated cardboard packaging, as well as the allocation of customers (so-called non-aggression agreements) and supplies to co-supplied customers (so-called non-belligerence agreements).

In this case too, the agreement was implemented through summit meetings of a general and directional nature between the CEOs or their substitutes, in which trade associations also participated, and regional meetings between the territorially concerned commercial directors. In addition, for the further definition of what was determined at regional level, more informal meetings were held, including by telephone, concerning the coordination of strategies in response to supply requests, auctions or tenders from common customers.

The Authority sanctioned the undertakings involved in the 'sheets agreement' for a total of approximately EUR 100 million and, for approximately EUR 178 million, the undertakings involved in the 'packaging agreement'. The benefit of exemption was granted in favour of the leniency applicant and fines were reduced for certain undertakings that were able to prove that their involvement in the agreements was limited and marginal.

### ***Vertical agreements***

AGCM

1848 - Issues concerning promotional activities in the educational publishing market

By decisions of November 16, 2021 and May 24, 2022, as part of an investigation to ascertain the existence of an alleged vertical restriction capable of limiting the operations of publishing promoters with exclusionary effects in the educational publishing market, the Authority made binding the commitments proposed by the main publishers active in educational publishing (De Agostini, Mondadori, Rizzoli, Pearson, Zanichelli) and by the two trade associations involved (i.e., AIE, representing Italian publishers or those active in Italy, and ANARPE, representing publishing promoters, agents, employees or concessionaires).

The investigation concerned approval and non-compete clauses contained in contracts between publishers and publishing promoters. Such clauses made the ability of promoters to take on assignments from competing publishers subject to prior authorisation from the existing publisher, thereby significantly limiting their professional mobility.

During the proceedings, the Authority considered the commitments proposed by the publishing houses and trade associations to be suitable for removing the anti-competitive aspects. Specifically:

- AIE and ANARPE undertook to amend the 2017 Collective Economic Agreement, eliminating the non-compete clause and ensuring its non-reintroduction in subsequent renewals;
- the publishers waived the exercise of approval clauses and, where provided for, exclusivity clauses in contracts with promoters, both single-mandate and multi-mandate for the subsequent five adoption campaigns;
- some publishers also waived the exercise of ancillary powers, such as the obligation to provide information on mandates in portfolio.

These commitments were made binding by the AGCM, as they were deemed suitable for restoring conditions of effective competition in the relevant market.

EUROPEAN COMMISSION

AT.40428 - Guess

With Decision C(2018) 8455 final, adopted in 2018, the European Commission sanctioned Guess for a vertical agreement consisting in the insertion of certain anti-competitive clauses in contracts with its distributors.

In particular, the company imposed various restrictions on its authorised retailers, including: (i) a prohibition on using the Guess brand in advertising through online search engines, limiting the visibility of retailers on the internet; (ii) a prohibition on selling online without specific prior authorisation from Guess, granted at its discretion and without objective and transparent quality criteria; (iii) a prohibition on selling to consumers located outside the territory assigned to the retailer; and (iv) restrictions on the freedom to determine resale prices, with interference in the autonomous setting of retail prices.

## ***2) Abuse of dominant position***

AGCM

A524 – Lediand Biosciences/Drug for the treatment of Cerebrotendinous Xanthomatosis

By decision of May 17, 2022, the AGCM sanctioned certain companies belonging to the Lediand group, active in the pharmaceutical sector, for abusing their dominant position in the market for drugs containing chenodeoxycholic acid (CDCA) as the active ingredient. Such drugs are used for the treatment of a rare disease that causes severe disability and can lead to premature death.

In particular, according to the Authority, the abuse consisted in the application, to the National Health Service (SSN), of unjustifiably high prices for the sale of an orphan drug (i.e., a medicine used for the diagnosis, prevention, and treatment of rare diseases) containing the active ingredient CDCA.

This abuse, moreover, would be part of an elaborate strategy deliberately planned over time; according to the AGCM, Lediand adopted a dilatory and obstructionist approach to the negotiation of the reimbursement price of the drug with the Italian Medicines Agency (AIFA), the competent public body. For a year and a half, despite repeated requests from the Agency, Lediand not only failed to provide any information and documentation on research and development investments that could adequately support its initial price proposal and/or subsequent ones and justify the price difference between CDCA Lediand and drugs that were chemically and pharmacologically identical, but also strategically delayed the negotiation procedure by submitting late corrective economic offers to the initial one.

The AGCM found that Lediand had abused its dominant position due to the excessive and unjustified price it charged for the sale of the orphan drug.

In light of the above, the Authority imposed a fine of approximately EUR 3.5 million on Lediand.

## ***3) Abuse of economic dependence***

AGCM

RP-1 – Hera – Gas metering group assignments/Payment terms

By decision of 2016, the AGCM found an abuse of economic dependence by Hera S.p.A., in relation to the payment terms applied in contractual relations with its suppliers.

According to the Authority's reconstruction, Hera engaged in systematic and unilateral conduct, consisting in the application of payment terms of 120 days from receipt of invoice end of month, in violation of the rules laid down by Legislative Decree No. 231 of October 9, 2002, on combating late payment in commercial transactions, which establishes a maximum term of 60 days.

The AGCM held that such repeated and widespread conduct was capable of constituting an abuse of economic dependence, including in the absence of an express contractual clause to that effect. In particular, the systematic violation of the legislation on late payments has been classified as a specific type of abuse, relevant regardless of proof of concrete economic damage suffered by the supplier companies.

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