Haier Europe

Antitrust Code of Conduct

July 2023

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INTRODUCTION

Candy S.p.A. is a *holding company at* the head of the multinational corporate group of the same name ("**Candy**," "**Group,"** or "**Candy Group**"), active in Italy through subsidiaries that include Candy Hoover Group S.r.l., ("**Candy Hoover**") and Haier A/C (ITALY) TRADING S.p.A. (HACI) and operating in the production and distribution of small and large household appliances (*small domestic appliances*, "**SDA**" and *major domestic appliances*, "**MDA**").

The Candy Group, through an appropriate Antitrust Compliance Program, which also includes the adoption and dissemination of this Antitrust Code of Conduct ("**Code**"), intends to ensure compliance with the principles and rules placed by the law to protect competition, to increase the corporate culture in this regard and to prevent the risk of possible conduct contrary to antitrust regulations.

A. ANTITRUST COMPLIANCE PROGRAM

The adoption of this Code is part of the broader Antitrust Compliance Program developed by Candy through, among other things, the following steps:

- Study of relevant legislation;
- Risk mapping and assessment (analysis of the relevant market and sensitive processes).
- Establishment of an Antitrust Compliance Program Manager ("**Antitrust Compliance Officer").**
- Adoption of this Antitrust Code of Conduct (conduct guidelines).
- training activities;
- Implementation of continuous monitoring and auditing tools.
- Implementation of a reporting channel (*whistleblowing* system).
- Provision for application of disciplinary sanctions in case of violation.

In the Antitrust Compliance Program and, in particular, in the identification of risk areas and the definition of the relevant market, the Candy Group's top management was directly involved, and they gave a concrete demonstration of their commitment to the adoption of the Antitrust Compliance Program and the consolidation of the company's competition culture.

B. PURPOSE OF THE ANTITRUST CODE OF CONDUCT

This Code **aims to**:

- To provide a practical guide that illustrates, in a simple and accessible manner, actions,

behaviors and omissions that are in compliance with or contrary to antitrust law, identifying the most prevalent areas/situations of risk of antitrust violations, and to suggest the correct behaviors to adopt.

- Identify areas in which the greatest risk of antitrust violation can be found.
- Provide guidance to Recipients on the steps to be taken to prevent the occurrence and in case to responsibly manage potentially critical situations.
- To define behavior guidelines for Employees (as defined *below)* of Candy S.p.A. and Candy Group companies acting within the scope of relevant business processes to ensure full compliance with antitrust regulations.
- Reiterate the importance, including ethically and socially, of conduct in accordance with competition rules.

It is important to comply with the Code in order to avoid:

- **The imposition of extremely high administrative fines** in the event of a finding of an antitrust violation*, which* can be as high as **10 percent of the total worldwide** (group) **turnover** of the firm involved in the infringement.
- any **claims for compensation** from third parties, including customers or competitors, who may have suffered direct and/or indirect harm as a result of antitrust wrongdoing.
- the **damage to the image of** the Candy Group that could result from the initiation of antitrust proceedings and **the diversion of economic resources** needed for defensive activities.
- The **nullity of contracts** that violate antitrust regulations.

C. SCOPE OF APPLICATION ANTITRUST CODE OF CONDUCT

This Code applies directly to all directors, managers, employees, *staff* and auxiliary resources and collaborators (third parties appointed according to existing company procedures) who act in the name and on behalf of Candy Group Companies based and operating in Italy (hereinafter referred to as "**Recipients**" who are the addressees of this Code).

In view of the above, it is the **duty of the Recipients:**

- adequately know the contents of the **Antitrust Code of Conduct** and be **familiar with the basic principles of antitrust law**.
- **Act in accordance with the guidance** provided with this Code.
- **Cooperate** in establishing and complying with the internal procedures prepared to

implement the Antitrust Code of Conduct.

- **Consult** the Candy Group Legal & Compliance Team in relation to those parts of the Antitrust Code of Conduct that require interpretation or further guidance.

- **Report** all violations of the Antitrust Code of Conduct and all potentially critical situations of which it becomes aware - not only related to the conduct of Candy Group companies but also to those adopted by third parties with whom the Candy Group collaborates, maintains relations to receive goods or services and/or provides business support through the channels that will be defined from time to time by means of Candy Group organizational communications.

In this respect, it should be noted that failure to comply with the Antitrust Code of Conduct entails the adoption of disciplinary measures (see Appendix 3 of the Code), the extent of which is proportionate to the seriousness of the violation. In fact, violation of the Antitrust Code of Conduct may lead to disciplinary action against the Employee concerned, up to and including dismissal, in accordance with applicable regulations in force and collective bargaining agreements, where recognized by law. In addition to applicable disciplinary measures, any violation of this Antitrust Code of Conduct may result in legal action against responsible persons or parties. The type and extent of the recalled sanctions will also be assessed depending on:

- degree of negligence, recklessness or inexperience as a function of the foresee ability of the event;

- assignments, functional position and responsibilities of people involved in the facts.

Of course, the Code can only provide an overview of the content and implications of the competition protection rules, with no claim to exhaustiveness. Therefore, in case of doubt, you should contact the Legal & Compliance Team of the Candy Group.

In addition, whenever a situation of potential antitrust risk or a case of suspected violation is identified, it should be reported as soon as it becomes known through the channels that will be defined from time to time by means of organizational communications.

The basic principles guiding the handling of reports are as follows:

- Protection of the identity of the reporter: all reports must ensure absolute confidentiality and non-disclosure of the name of the reporting persons except to the Antitrust Compliance Officer.

- Bad faith reports: ensure adequate protection from bad faith reports by censuring such conduct and informing individuals/companies in cases of established bad faith.

- Anonymous reports: reports made by anonymous senders will be considered if properly

substantiated and supported by factual evidence.

D. APPROVAL AND UPDATE

The Antitrust Code of Conduct was approved by the Board of Directors of Candy S.p.A. on March 29, 2023.

Authority is given by the Board of Directors of Candy S.p.A. to the Legal & Compliance Team, with the support of the Antitrust Compliance Officer, to make such amendments to the Antitrust Code of Conduct as may be necessary to adapt to legislative or regulatory measures or developments in case law.

The Antitrust Code of Conduct is published by means of shared network space (corporate intranet), posting on bulletin boards and any other means that will be deemed appropriate to ensure its maximum dissemination and knowability to Stakeholders within the corporate organization.

I. THE RULES PROTECTING COMPETITION: GENERAL PRINCIPLES

Antitrust law is driven by the idea that the competitive process benefits consumers by fostering the spread of better products at lower costs while enabling the efficient allocation of productive resources. On this basis, antitrust law-and in particular, Articles 101 and 102 of the Treaty on the Functioning of the European Union ("**TFEU**") and Articles 2 and 3 of Law **No. 287 of** October 10, 1990 ("**Law No. 287/90**") sanction three categories of conduct:

- **Horizontal** agreements, i.e., agreements or concerted practices between competitors that harm competition;
- **vertical** agreements, i.e., supply and distribution agreements between operators active at diverse levels of the supply chain that are shown to be anticompetitive;
- **abuses of dominant position**.

Article 9 of Law No. 192 of June 18, 1998 ("**Law No. 192/98**" or the "**Subcontracting Law**") also empowers the Competition and Market Authority ("**AGCM**") to impose warnings and sanctions on companies in cases of **abuse of economic dependence** that is relevant to the protection of competition and the market.

Although the general principles to which these cases are subject are clear and intuitive, drawing the line between lawful and problematic conduct may not always be straightforward.

This Code is intended, therefore, to offer some examples to help understand typical situations to pay attention to.

A) HORIZONTAL UNDERSTANDINGS

These are agreements or concerted practices between direct competitors whose object (i.e., purpose or objective) or effect on the market (irrespective of the aforementioned purpose or objective) is to restrict competition, resulting in higher prices or quota quantities, a division of customers or territories, or even less product innovation and quality than would otherwise have emerged. A typical example is the so-called cartels.

They fall into this category:

- **agreements**, i.e., the common intention of two or more parties to engage in certain conduct in the marketplace, irrespective of any formal guise and the production of specific legal obligations;
- **concerted practices**, i.e., forms of coordination between competing firms that, while not going as far as to reach an actual agreement (even if informal), are intended to establish tacit cooperation;
- **decisions of business associations**, i.e., decisions made by collective structures or common bodies capable of binding or influencing by any form of deliberation, even non-binding, the business conduct of affiliated enterprises.

The most serious forms of **cartels** are so-called **cartels** ("*hard core*" restrictions).

Typically, they take place through agreements whereby two or more competitors propose to:

- **Set sales prices and other important business variables** (discounts, promotions, margins, etc.);
- **coordinate their respective production levels and quantities to be sold**: such agreements have the same effect as a price cartel;
- **fixing the purchase prices of production *inputs*** (so-called purchasing cartels) to limit the market power of sellers;
- **dividing up the market and/or customers: for** example, agreeing which customers to supply (or not to supply) or in which territory to operate (or not to operate);
- **colluding in participating in public or private tenders (so-called *bid rigging*)**: coordination may involve decisions to participate or not participate, conditions of participation, bidding arrangements, rotation agreements in allocations, and, more generally, the prior sharing of variables capable of affecting the outcome of the tender;
- **collective boycotts: for** example, agreeing with other competitors to exclude a new entrant from the market or disciplining an "inconvenient" third competitor (e.g., because

it is particularly aggressive).

As anticipated, for the prohibition to be triggered, a written agreement or other type of pact, even an oral one, such as a *gentlemen's agreement*, does not necessarily have to be concluded; even a simple agreed practice is sufficient for this purpose.

Note that **parallel conduct**, such as similar price increases by two or more firms, **is not necessarily illegal**, for example, if it occurs in response to a cost increase; however, if it is accompanied by contacts between these parties (meetings or even exchanges of information about each other's strategies) there is a significant risk that it could be considered an agreement/concerted practice in violation of antitrust rules.

PROHIBITED BEHAVIORS	
Agreements on sales prices and other elements of trade policy	It is forbidden to enter into any kind of agreement with competitors (both current and potential) regarding prices to be charged in the market and other commercial variables. Agreements with competitors (actual or potential) are prohibited for: ➢ Set the selling price of a product or service (including base price, surcharges, discounts, promotions, margins, price increases/decreases, and pricing methods). ➢ Agree on marketing plans; ➢ Agree on guarantees given to customers. ➢ fixing production costs, transportation costs, or any other terms or conditions for the sale of products (including, but not limited to, credit concessions, promotional activities, imposition of service charges, and delivery terms) regardless of whether such arrangements result in an increase or decrease in price.
Agreements on purchase prices of production *inputs.*	Agreements with competitors (actual or potential) are prohibited for: ➢ fixing the purchase prices of production inputs (so-called purchasing cartels) to limit the market power of sellers. ➢ Coordinate the price or terms of purchase of a supply.
***Output* agreements**	Agreements with Competitors (actual or potential) are prohibited for: ➢ Coordinate respective production levels and quantities to be sold. ➢ Prevent or limit production; ➢ Prevent or limit outlets or market access. ➢ Coordinate the degree of utilization of its production facilities. ➢ Agree with, prevent or restrict investment, technical development or technological progress. ➢ Agree with a Competitor on the simultaneous introduction of a technological innovation.

Breakdown of markets	Agreeing with competitors (current or potential) on the allocation of sales, customers, territories, products or services to be provided is prohibited. Agreements with competitors (actual or potential) are prohibited for: ➢ allocate customers or sales territories (so-called market allocation). ➢ agreeing on decisions to participate or not to participate in public or private tenders, the conditions and manner of submission of bids, who will be awarded the tenders, and, more generally, the prior sharing of variables capable of affecting the outcome of the tender. ➢ ascertain a competitor's willingness to practice terms and conditions substantially similar to those practiced by Candy or agree not to compete with each other with respect to certain customers or to apportion a certain territory. ➢ Agreeing on the division of a territory for the purpose of making investments, building production facilities or dividing up customers or areas. ➢ Prevent or limit customers' ability to purchase the same or other products/services from other suppliers. ➢ Making the sale of one product/service contingent on the purchase of another unsolicited good/service that would otherwise be sold separately. ➢ Impose a prohibition on a distributor to resell in a certain area, territory or state.
Collective boycotts	Competing agreements (actual or potential) are always prohibited for: ➢ exclude a new entrant from the market or discipline an "inconvenient" third competitor (for example, because it is particularly aggressive). ➢ Refusing in concert to contract with a potential customer or supplier. ➢ Agree on measures and steps to be taken not to allow a new entity to enter the market.

ESSENTIAL RULES OF BEHAVIOR

- **NOT** to engage in any initiative/discussion with a competitor on commercial and strategic aspects, especially in relation to the future conduct of Candy Group companies regarding procurement, production, technical decisions (e.g., timing and manner of product launches or introduction of innovative technologies, such as those that provide emission reduction or energy savings, choices on investments), prices, margins, discounts, customers or territories served.

- If a competitor initiates a discussion on such issues, **stop** the conversation immediately **and inform** the Legal & Compliance Team and the Antitrust Compliance Officer of the incident.

- **DO NOT** agree with a competitor on measures and initiatives to be taken to prevent a new competitor from entering the market or to boycott a particular customer or supplier.

A. 1. INFORMATION EXCHANGE

A prohibited cartel can be challenged even in the presence of less structured forms of cooperation than a cartel: in this sense, even **the mere exchange of sensitive information between competitors can constitute an offense in itself.** This can occur when information voluntarily exchanged between competing firms can provide advance visibility of each other's future behavior.

In order to identify information exchanges that may be relevant from an antitrust point of view, it is necessary to dwell on three main factors:

a. **characteristics of the information exchanged**. In general terms, the indices to be considered pertain to the strategic nature of the information, its suitability to reveal future market behavior, its aggregated or disaggregated nature, its confidential (i.e., non-public) nature, and the degree to which it is current. Specifically, data related to key strategic business variables are typically considered sensitive, for example:

   - prices and bids (including in the bidding process);
   - discounts, margins and/or promotions, even with reference to an individual customer;
   - Customer list or other customer information;
   - values and/or sales volumes;
   - Market share and territorial presence;
   - *business plan* and *marketing* initiatives;
   - conditions of sale;
   - production capacities and/or production volumes;
   - Technical decisions (e.g., timing and manner of maintenance).

b. **characteristics of the information system**. The greater the number of players involved and the frequency of exchanges, the greater the antitrust risk;

c. **characteristics of the market on which** the pipelines insist. In this respect, the greater the degree of market transparency and/or concentration and the level of stability of key demand and/or supply variables, and the more similar the *players* operating in a given market are in terms of cost structures or production capacity, the greater the antitrust risk.

Therefore, the utmost care should be taken in interactions with one's competitors, avoiding not only providing one's own or the company's confidential information, but also requesting,

receiving or otherwise using proprietary or confidential information belonging to competing operators. The latter, in fact, are not considered legitimate sources for *market intelligence* activities. Specifically:

- If you receive commercially sensitive information from a competitor, you must promptly inform the sender or interlocutor that Candy Group *policy* prevents you from acquiring this information. In such a case, before taking any action and taking care not to further disseminate or disseminate the information received within the company or the Candy Group, you must immediately inform the Antitrust Compliance Officer and the Legal & Compliance Team of the Candy Group;

- where a third party (such as a joint customer) offers to provide a competitor's proprietary information (e.g., copies of internal documents), one must decline such an offer and, where such data are egregiously sent, inform the Antitrust Compliance Officer.

Monitoring competitors' activities or, more generally, market performance is not in itself unlawful under antitrust law. However, the regulations do not allow sensitive information regarding competitors' activities to be acquired through exchanges of information between competitors or through trade associations or intermediary third parties responsible for sharing the information collected.

A number of precautions should also be taken where the *market intelligence* activity is carried out by means of algorithms or artificial intelligence systems capable of monitoring real-time changes in product prices, particularly avoiding, in the case of sales through direct *online* channels, the use of algorithms that apply an automatic adjustment to the average price found in the market.

It remains, of course, **permissible,** however, to obtain information on the policies adopted or conditions practiced by one's competitors through **public sources** (*Internet* sites, financial statements, studies and specialist publications, etc.) or by conducting **autonomous *market intelligence* activities** (e.g., a client communicates in broad strokes the other offers received and requests to submit a better offer).

ESSENTIAL RULES OF BEHAVIOR

- **DO NOT** exchange (directly or indirectly) with competitors information related to:
  - prices;
  - volumes and/or sales values;
  - production capacity;
  - costs (e.g. administrative or logistics costs);
  - investment (e.g., technological innovation, investment in IT or logistics);
  - *business plan*;

- customer list;
- promotional initiatives;
- turnover, profits, sales figures and market share (if not already publicly available);
- Territorial presence and/or future business plans;
- Conditions of sale, supply or purchase;
- Any other information that is not in the public domain and is commercially relevant.

- Minimize contact with competitors.

- **DO NOT** participate in discussions with competitors on topics potentially prohibited by antitrust law.

- **DO NOT** use clients or other third parties (e.g., consulting firms engaged in data collection for the purpose of preparing Reports, industry studies, position papers, statistical surveys, or other similar documentation) to transmit commercially sensitive information to competitors.

- **DO NOT** solicit customers to provide confidential information about competitors.

- Immediately contact the Antitrust Compliance Officer if inappropriate information is received from competitors and/or third parties.

- Contact the Legal & Compliance Team in advance before participating in or receiving statistical surveys organized by third parties.

ADDITIONAL PRECAUTIONS APPROPRIATE WHEN USING ARTIFICIAL INTELLIGENCE ALGORITHMS/SYSTEMS FOR PRICE **DISCOVERY**

Where *market intelligence* activity is conducted by means of algorithms or artificial intelligence systems that can monitor real-time changes in product prices, a number of additional precautions should be taken, such as:

- Avoid using a price discovery platform that is *market-standard* and/or widespread among major *players* active in the relevant market;

- In the case of direct sales of products *online*, **do not** use *price monitoring* systems that process the price of the product by **automatic adjustment** to the average price found in the market. The use of the *price monitoring* system should be limited to acting as a support, together with other factors, for the development of the Candy Group's pricing

strategies;

- with reference to the use of *price monitoring* algorithms, limit the frequency of manual processing of pricing strategies performed by Candy Group resources;

- Contact the Legal & Compliance Team (i) before starting to use *price monitoring systems* and/or platforms for prior verification of the antitrust compliance of such systems and (ii) where stagnation/alignment of prices charged by major *competitors is* detected in the relevant market where the *price monitoring* system is used, also to consider cancelling and/or suspending the subscription to the *price monitoring* platform.

CASE UNDER CONSIDERATION BY THE ANTITRUST AUTHORITY

I856 - PRICE COMPARATORS/EXCHANGE OF INFORMATION RCA POLICIES, May 10, 2022.

In May 2021, the AGCM launched an investigation against multiple insurance companies and price comparators to ascertain whether they had engaged in a restrictive agreement on competition through an exchange of sensitive information on the economic conditions of direct sales of auto liability policies.

According to the Authority's analysis, in particular, the companies would have exchanged - constantly and regularly - such sensitive information through the sharing of *reports* prepared and distributed by price comparison companies. Through the implementation of the cartel, the insurance companies would have been in a position to charge consumers higher premiums for CAR policies through discount policies mitigated by knowledge of the commercial strategies and pricing policy of competitors in the direct sales segment.

In May 2022, the companies involved submitted measures to the AGCM - considered suitable to close the proceedings without infringement - through which they undertook, in particular, to *i)* transmit/receive data contained in the *reports* without identifying information about the quote or the user requesting it; *ii)* make the information about the premiums offered anonymous and aggregated; and *iii)* not adhere to reporting services that provide for ways of processing and/or circulation of information that do not comply with these criteria.

Finally, special attention should be paid to contacts in the context of M&A transactions (e.g., during *due diligence*), which usually involve the sharing of a great deal of information, including confidential information, between the parties in order to verify the feasibility of the potential transaction, estimate the value of the target, negotiate contractual terms, evaluate a possible post-transaction integration plan, etc. In fact, it is not necessary, in order to incur a prohibited practice, for the exchange of information to take place with the intent to restrict competition, nor is it necessary for it to be part of a broader case.

For the steps to be taken and the safeguards to be adopted to avoid undue exchange of sensitive information in M&A transactions, see Section D.

A.2 COORDINATION IN PUBLIC OR PRIVATE TENDERS

Public and private purchasers often use competitive bidding procedures to achieve better value for money; however, competitive bidding procedures make improvements in price, quality, and innovation possible only if the participants in the bidding process are truly in competition with each other (i.e., if they define terms and conditions honestly and independently).

Antitrust law prohibits firms competing in a public or private competition from agreeing to alter its course or determine its final outcome in advance (*bid rigging*).

The alteration of bidding procedures occurs in **market contexts** with precise characteristics:

- presence of **few competitors** with similar efficiency and size;
- demand for **homogeneous products**;
- Participation **in different bidding procedures by** the same competitors;
- Dividing the contract into **several lots** of **similar economic value**.

However, it is clear that competitive restraints may well occur under competitive market conditions other than those just described.

As for the forms in which such agreements may be expressed, it is possible to distinguish between several cases[1] , including in particular:

- **Tender** boycott: The main symptoms of boycott, aimed at prolonging the contract with the usual supplier or apportioning the work or supply *pro rata* among all the firms involved, are (1) no bids submitted; (2) submission of a single bid or a number of bids that is otherwise insufficient to proceed to award the contract; and (3) submission of bids of the same amount, especially when the bidding procedures provide for cancellation of the tender or apportionment of the contract pro rata in these circumstances.
- **Submission of convenience or "back-up" bids**: convenience bids give an apparent competitive regularity to the tender and conceal the raising of award prices. The main symptoms are: 1) bids submitted by unsuccessful firms characterized by amounts that are manifestly too high or in any case higher than what the same firms have offered in similar procedures; 2) bids containing special conditions that are known to be unacceptable to the contracting station, resulting in their exclusion; and 3) the submission of bids that are higher than list prices. In general, a sequence of tenders in which the same firm is always awarded the contract may raise suspicions that competitors are submitting bids of convenience.

[1] See AGCM's Vademecum for Contracting Stations, accessible at the following link: https://www.agcm.it/dotcmsDOC/allegati-news/Delibera_e_Vademecum.pdf.

- **Subcontracts or ATIs (Temporary Association of Enterprises)**: subcontracts and Temporary Associations of Enterprises (ATIs) make it possible to broaden the range of entities that can participate in bidding mechanisms, making room for smaller firms as well. For this reason, they are considered instruments that in themselves promote competition among enterprises in the bidding process. However, in some cases they may be used by tender participants to divide up the market or even the individual contract. Possible indications are: (1) firms, individually capable of participating in a tender, which instead refrain with a view to later subcontracting or opt to form an ATI; (2) the formation of ATIs or subcontracting perfected by firms sharing the same prevailing activity; 3) the withdrawal of a bid by a firm that initially decides to participate in a tender, which then turns out to be the beneficiary of a subcontract related to the same tender; 4) in cases of an award based on the most economically advantageous bid, the ATI (among the largest operators) may be the result of an exclusionary strategy, aimed at preventing smaller firms from achieving the necessary qualitative score.

- **Bid rotation and market sharing**: analysis of the sequence of awards can also signal the presence of a cartel. When the partitioning practice affects an individual procurer, the latter will have clues to recognize suspicious "regularities" in the temporal succession of contracting firms or in the division of awards into lots. Suspicious regularities could concern not only the number of awards but also the sum of their amounts.

- **"Suspicious" manner of participation in the auction**: it may happen that members of a cartel submit applications for participation in the auction in such a way as to betray the common wording. This is the case with: 1) common typographical errors; 2) same handwriting; 3) reference to applications of other participants in the same tender; 4) similar estimates or calculation errors; 5) simultaneous delivery by one person of several bids on behalf of different participants in the same tender process.

TRICKS TO FOLLOW	
When participating in bidding procedures, the following rules of conduct are suggested:	
BEFORE THE RACE	• DO NOT discuss/agree on lots to participate in; • DO NOT discuss/agree on value offers/discounts; • DO NOT "respect" the "traditional" areas of competitors;
DURING THE RACE	• DO NOT "question"/compare with competitors.
AFTER THE RACE.	• DO NOT reveal their future strategies.
Participation in ATI (Temporary Association of Enterprises), a legitimate instrument in itself, can also assume antitrust relevance. Therefore, **always consult the Legal &**	

Compliance Team in advance where you are considering participating together with a competitor in a public or private tender.

CASE SANCTIONED BY THE ANTITRUST AUTHORITY

I822 - CONSIP/RACE SAFETY AND HEALTH 4, Sept. 18, 2019

With this measure, the Authority condemned the companies Com Metodi S.p.A., Sintesi S.p.A., Igeam S.r.l., Igeamed S.r.l. and Igeam Academy S.r.l.to pay penalties totaling more than 3 million and 200 thousand euros, for having put in place an agreement restrictive of competition, consisting in the coordination of their respective strategies for participation in a tender announced in the sector of the provision of health and safety services in the workplace.

The arrangement took the form of coordinating strategies for participation in the SIC4 tender, called by CONSIP on occupational health and safety, and was implemented through the submission of checkerboard bids on the various lots of interest by the convicted companies. Specifically, the Authority found that the rebates submitted by Com Metodi, Igeam and Sintesi in the lots in relation to which they were not candidates for the award could not find objective justification, as they were lower than the minimum average rebate recorded in the previous tender (SIC3) and, in any case, also lower than the average rebates in the other lots of the SIC4 Tender.

A.3 PARTICIPATION IN BUSINESS ASSOCIATIONS

Competition-protection rules are not limited to prohibiting only agreements or concerted practices between individual firms, but also **decisions by associations of firms that are** restrictive of competition. This is because collusive balances could be facilitated in such aggregation forums.

Decisions that could be relevant for antitrust purposes include any form of deliberation, regardless of its legal form, even of a non-binding nature, which has been taken by the association with the purpose of influencing the commercial/industrial conduct of affiliated enterprises by altering the play of competition.

In the antitrust authority's decision-making practice, decisions made within the framework of associations have sometimes been ascribed directly to the trade association, and sometimes also **to the member enterprises**. In particular, in cases where the enterprise has actively participated in the implementation of the cartel, the cartel will also be ascribed to it.

Business associations fully include **trade associations**. It is permissible to participate in the activities and meetings of such associations. However, as anticipated, participation in trade associations can be sensitive from an antitrust standpoint because such forums provide a venue for meeting competitors and potentially exchanging sensitive information.

The collection, organization and processing of data and information from members of a trade association for the purpose of carrying out the latter's institutional activities and in the interest of its members is not automatically illegitimate, but it must be conducted with the observance of certain precautions concerning both the content and manner of the data provided to the association, its handling by the association, and the content and manner of circulation of data

from the association to its members. Contact the Legal & Compliance Team in advance before participating in or receiving statistical surveys and/or data processing organized by trade associations.

Referring to the discussion *above on the* exchange of sensitive information, the following are some practical steps to take when participating in the work or activities of a trade association.

TRICKS TO FOLLOW

- **Rules of participation**: when membership in a trade organization is an essential precondition for access to the sector, or to a specific market or structure, the membership and exclusion criteria must be clear, precise, neutral, objective, legitimate, carefully pre-established on a non-discriminatory basis, and open to all stakeholders on reasonable terms and conditions that do not present improper limitations. When exclusion from the trade association results in the exclusion of the operator from the economic sector, registered enterprises may not vote with the purpose of excluding a sector operator. Any refusal of membership must be justified in all cases, and the excluded person/company must always be given an opportunity to explain its case.

- **Association Activities/ Meetings**: it is necessary to verify that the association has taken appropriate measures to ensure that association activities are conducted in compliance with antitrust regulations. When attending a meeting, institutional meeting or working group of a trade association, the following rules must be strictly adhered to:

  - Get hold of the meeting **agenda in** advance and review its contents in order to check for potentially antitrust-sensitive issues/topics;

  - If it appears that the agenda items include issues relevant from an antitrust perspective, **seek prior advice/guidance from the Legal & Compliance Team on what to do**.

    - In general, discussions on representing the interests of member companies to public institutions, organizing professional development courses and programs, general study on *trends* in the relevant industry are allowed.

  - If the discussion deviates from the agenda, involving issues that seem relevant to competition law, **leave the meeting immediately**, making sure that this is recorded in the minutes. As soon as possible, inform the Legal & Compliance Team and the Antitrust Compliance Officer of the incident.

  - **DO NOT** exchange competitively sensitive information on **the sidelines of the meeting.** If despite objections any counterparty attempts to initiate/continue a discussion on antitrust-critical issues, **stop the conversation immediately**.

CASE SANCTIONED BY THE ANTITRUST AUTHORITY

I783 - AGREEMENT BETWEEN VENDING SECTOR OPERATORS, June 8, 2016

With more than 100 million euros, the Antitrust Authority has fined the leading operators of automatic and semi-automatic vending (so-called *vending*) of food and beverages and their trade association for putting in place an anticompetitive agreement.

The understanding, in addition to allocating tender orders (on which see *supra*), aimed at coordinating the selling prices of products distributed by means of vending or semi-automatic vending machines, mainly due to the initiatives taken by the trade association.

First, enterprises together with CONFIDA developed a *standard* specification containing a price list; second, CONFIDA advocated, including in the press, the need to increase the selling prices of products and to adhere to a "value pact" to counter the decline in prices. Finally, at the time of the VAT increase on the products under consideration, both companies and CONFIDA launched initiatives to raise members' awareness of the need not to use the VAT increase for commercial purposes, but to fully pass this increase on downstream.

The same expedients apply in the case of participation in consortia or other bodies in which representatives of competing enterprises are present.

Pursuant to the new paragraphs *1-bis* and *1-ter* of Article 15 of Law No. 287/90, introduced by Legislative Decree Nov. 8, 2021, no. 185 (*ECN+* Directive*),* in the event that an infringement committed by a business/trade association is found to affect the activities of its members (as is often the case), the Authority shall apply to the association an administrative fine of **up to 10 percent of** the sum of the total worldwide turnovers achieved by each member operating in the market affected by the infringement committed by the association.

In the event that the association is not solvent, the Authority authorizes it to require its members to **contribute up to the amount of the penalty**.

If enterprises fail to pay their contributions to the association in full within the time limit set by the Authority, the Authority may**: *i)*** first **require payment of the penalty directly from any enterprise** whose representatives were members of the association's decision-making bodies when the association made the decision that constituted the infringement; ***ii)*** then, if necessary to ensure full payment of the penalty, **require payment** from any other member of the association that was operating in the market in which the infringement occurred.

A.4. OTHER COOPERATIVE AGREEMENTS WITH COMPETITORS

Special treatment is given to more structured forms of cooperation between competing enterprises, such as the creation of genuine joint ventures to carry out one or more economic steps, for example:

- **joint production agreements**: agreements under which production is carried out by one party or by two or more parties or jointly through a joint venture operating one or more production facilities, or through less close forms of cooperation, such as subcontracting agreements, in which one party (the "principal") entrusts the production of a product to another (the "subcontractor");

- **Joint purchasing agreements**: joint purchasing agreements can include both vertical and horizontal agreements; they often take the form of an "alliance," which is a business association formed by a group of retailers for the purpose of jointly purchasing products.

- **R&D agreements**: may involve outsourcing of some R&D activities, joint improvement of existing technologies, and cooperation in research, development and marketing of completely new products. They may take the form of cooperative agreements or a jointly controlled enterprise.

- **Logistics and transportation arrangements;**

- **Agreements on technical standardization and on general conditions or *standards (so-called* standardization or normalization agreements)**: agreements that define technical or quality requirements for current or future products, services and processes or production methods. This category includes agreements that set technical specifications for consumer electronics products or conditions for obtaining quality marks or certifications, and environmental protection agreements (i.e., agreements between companies that, often at the encouragement and support of member states, participate in activities/initiatives aimed at reducing pollution or, more generally, other environmental policy objectives, objectives that are recognized by Article 191 TFEU).

These cooperation agreements can be hugely different in scope and are overly sensitive considering the competitive relationship between the parties. As a result, they must be evaluated in advance on a case-by-case basis with the necessary involvement of the Legal & Compliance Team, also taking into account the specific circumstances of the case and the beneficial effects that a structural integration may bring about for the participating companies and "downstream" for customers/consumers, in terms of, for example, efficiency, technical progress or environmental protection.

Therefore, it is good that these agreements, before they are discussed and negotiated, are first subject to legal review by the Legal & Compliance Team.

CASE SANCTIONED BY THE EUROPEAN COMMISSION

IV/31,458 - X/OPEN GROUP, December 15, 1986

The Commission ruled that the agreement concluded between a number of companies active in the consumer electronics sector, including Philips, Ericsson and Siemens, to create the X/Open Group, and aimed at creating an open industry standard that would allow the portability of an operating system (Unix) to be exploited in order to increase the volume of applications available on members' computer systems, constituted a violation of Article 101 TFEU (formerly, Article 85 EEC).

In the present case, the Commission found that although the adopted standards had been made available to the public, the restrictive policy adopted with respect to project applications from companies active in the consumer electronics sector (a policy that limited participation to only large manufacturers in the European information technology industry who had their own experience with Unix operating systems in that sector and were committed to the group's objectives) had effectively prevented non-members from influencing the results of the group's work and obtaining the *know-how* and technical understanding related to those results that members could acquire. Moreover, unlike members, non-members had not been able to apply the standard before it was adopted.

B) VERTICAL UNDERSTANDINGS

In dealings with independent companies (i.e., not under the control of the Candy Group) that are at different levels of the production/distribution chain, such as suppliers and distributors (so-called vertical arrangements), Candy is free to choose its business partners and negotiate/fix the terms of the relationship, provided that it acts independently of its competitors and does not hold a dominant position.

In vertical relationships, Candy must respect the freedom of counterparts to:

- Choose its customers to whom it will sell any products/services purchased from Candy; and
- Define the prices of products/services.

In fact, antitrust law prohibits vertical agreements that have as their object or effect the prevention, restriction or substantial distortion of competition, such as:

- Direct or indirect imposition of minimum/fixed resale prices.
- absolute territorial protection (i.e., restriction of active and passive sales, including prohibiting its distributors from using the *online* channel for their own sales);
- impediments to passive sales (i.e., response to unsolicited supply requests).

There are some restrictions that are not illegal per se, but **need to be evaluated on a case-by-case basis** to ascertain whether they can be included in the specific supply/purchase relationship without raising antitrust risks. These are specifically:

- **non-competition obligations**: an agreement whereby the buyer agrees not to produce, purchase, sell or resell goods or services in competition with the contract goods or services, or agrees to purchase from the supplier or another enterprise designated by the supplier more than 80 percent of the total annual purchases of the contract goods or services and their competitors;
- **exclusive distribution**: an agreement whereby the supplier agrees to sell its products to up to five buyers for them to resell in a particular territory or to a particular customer group. At the same time a limit is imposed on other resellers on active sales in territories or customer groups assigned by the supplier to itself or assigned exclusively to a maximum of five distributors. The supplier may transfer ("***pass on***") the restriction of active sales to its exclusive distributors by asking the latter to impose in turn, on its direct customers, a ban on active sales in the territories and/or customer groups assigned exclusively to the supplier or to other distributors. Where different distribution systems are used among member states, it is possible to protect exclusive distributors in a member state from active sales by selective

or free distributors-and their customers-in countries where selective distribution or free distribution exists, respectively.

- **Selective distribution**: an arrangement under which the number of resellers is restricted on the basis of selection criteria essentially related to the nature of the products. The restrictions imposed on resale are not restrictions on active sales in a territory or to a group of customers (as in the case of exclusive distribution), but restrictions on any sales to unauthorized resellers. As a result, only designated resellers and end consumers can become buyers. The supplier may require its selective distributors to transfer ("**pass on**") the restriction of active and passive sales to unauthorized distributors within the territory in which the selective distribution system operates. Where different distribution systems are used between member states, it is possible to protect selective distributors in a member state from active and passive sales by exclusive or free distributors-and their customers-to unauthorized distributors located in countries where the supplier operates a selective distribution system;

- **free distribution**: neither exclusive nor selective distribution arrangements on which the supplier may impose restrictions relating to the buyer's place of establishment and active or passive sales to end users by a buyer operating at the wholesale level. Where different distribution systems are used between member states, it is possible to (i) protect exclusive distributors in a member state from active sales by free distributors--and their customers--in countries where free distribution exists, and (ii) protect selective distributors in a member state from active and passive sales by free distributors--and their customers--to unauthorized distributors located in countries where the supplier operates a selective distribution system;

- **exclusive supply**: an agreement whereby the supplier agrees to sell the contracted products or services only or primarily to a single buyer, either generally or for a particular use.

In relation to these restrictions, there is a presumption of legality (so-called block exemption) where (i) the market share held by the parties in the relevant market where they respectively sell and purchase the contracted goods or services does not exceed 30 percent, (ii) there are no *hardcore* restrictions-for example, direct or indirect resale price maintenance between supplier and reseller, absolute restrictions relating to the territories in which and/or the customers to whom the reseller may resell products/services (so-called "passive sales" cannot be prohibited, nor can the effective use of the Internet by the buyer or its customers to sell the contracted goods or services be prevented) - and (iii) the duration of any non-compete obligations is no longer than 5 years.

Above these thresholds (so-called *safe harbor*), an *ad hoc* assessment should be conducted, based on several factors such as the market shares of the parties and Competitors, the existence of barriers to entry in the relevant market, the existence of efficiency benefits, etc.

As these are very complex assessments, before initiating any contact, information exchange and/or negotiation in relation to any possible vertical relationship, and in particular before signing exclusivity clauses, non-compete obligations or other restrictions on sales/purchases, it is necessary to **contact the Legal & Compliance Team in advance in** order to conduct an *ad hoc* antitrust assessment.

PROHIBITED BEHAVIORS

In dealing with independent distributors/dealers, it is not allowed:

- interfere, directly or indirectly, with the pricing or final discount policies that the distributor intends to apply to its customers. The latter must therefore remain free to decide its own commercial policy with reference to transfer prices.
- Directly or indirectly establishing fixed or minimum resale prices or other conditions for the resale of contracted products (e.g., setting the margin applicable by the distributor, setting the maximum level of discount that the distributor can grant to its buyers, or obliging the distributor to obtain its prior approval in the case of promotions).
- absolutely limit the customers to whom or the territory in which the distributor may resell the contracted products (except as noted earlier for the several types of distribution systems).
- Assign distributors absolute exclusive zones or reserved customer groups, preventing at root any possibility of passive sales by other distributors.
- discriminate against products intended for export by providing higher sell-in prices for such products or limit the operation of the warranty on a product based on the EU state in which it was purchased.
- Apply aggressive price monitoring systems, penalties, incentives or other indirect measures to achieve these ends.
- Implement any initiative or interference that is aimed at regulating competitive confrontation between distributors, such as helping them reach a non-belligerence agreement.

It is ALLOWED to indicate a **maximum or recommended price, provided that** (i) the above three conditions for benefiting from *safe harbor* are met, and (ii) this does not amount to the setting of a fixed or minimum price even through lobbying.

THE NEW EU REGULATION 2022/720 ON VERTICAL AGREEMENTS

On June 1, 2022, the new EU Regulation on Vertical Agreements (EU Reg. No. 2022/720) entered into force, which, together with the European Commission's new Guidelines on Vertical Agreements, introduces some significant innovations compared to the previous framework, with the aim of adapting it to the developments that have affected distribution markets in recent years.

The Regulation will apply immediately to contracts entered into after its entry into force, while there is a one-year transitional arrangement (until May 31, 2023) for vertical agreements already in force as of May 31, 2022, which do not meet the conditions for exemption set out in the Regulation but which meet the conditions for exemption set out in the previous EU Regulation No. 330/2010, in order to allow companies to comply with the new requirements.

The new framework maintained the "safety zone" provided by the previous EU Regulation No. 330/2010, which provides for a "presumption of legality" (block exemption) provided that the shares held by the supplier and distributor in the relevant market where they respectively sell and purchase the contracted goods or services is not more than 30 percent, while it provided for some important innovations regarding:

- **Broadening the exemption for certain territorial and/or customer restrictions** in terms of greater flexibility in exclusive distribution and selective distribution agreements;

- **distribution agreements between competitors (so-called "Dual Distribution")**, i.e., distribution models in which the distributor sells its goods both directly to end consumers (e.g., through the *online* sales channel) and through independent distributors, and which is therefore characterized by a scenario in which the supplier operates in direct competition with its distributors. In particular, the new framework excludes from the exemption information exchanges between supplier and distributor that are not directly related to the execution of the vertical agreement or necessary to improve the production or distribution of the contract goods or services. Although it is necessary to involve the Legal & Compliance Team in advance for a thorough assessment of information flows before embarking on any dual distribution arrangement, the Commission provides companies with a list (illustrative and not exhaustive) of authorized and non-authorized information in *dual distribution* systems:

INFORMAZIONI AUTORIZZATE	INFORMAZIONI NON AUTORIZZATE
➢ Informazioni tecniche ➢ Informazioni logistiche ➢ Feedback dei clienti (a certe condizioni) ➢ Prezzi di sell-in ➢ Prezzi al dettaglio suggeriti ➢ Informazioni di marketing e promozionali (non prezzi futuri) ➢ Informazioni di mercato	➢ Informazioni sui prezzi futuri ➢ Informazioni su clienti specifici dei distributori ➢ Informazioni relative a beni venduti da un acquirente con il proprio marchio con un produttore di prodotti di marca concorrenti, a meno che il produttore non sia anche il produttore dei prodotti a marchio proprio

- ***online* sales**: the possibility is introduced for the supplier to (i) charge with respect to the same distributor different wholesale prices for *online* and *offline* sales, unless the price difference pursues the primary objective of hindering online sales and/or *cross-border* sales (ii) impose, under certain circumstances, restrictions relating to the use of *marketplaces, provided that* the restrictions do not have the object of preventing the actual use of the Internet for the sale of the contracted goods/services, and (iii) prohibit its distributors from using price comparison services where such services do not meet certain quality standards.

- **Non-compete obligations**, with reference to agreements tacitly renewable beyond five years, now included in the benefit of the exemption, provided that the distributor is allowed to renegotiate or terminate the vertical agreement containing the non-compete obligation with reasonable notice and without incurring unreasonable costs;

- **commercial agency agreements**, for which the new Guidelines provide a more restrictive interpretation of the so-called *agency test* (in order to stay out of the application of the anti-competitive agreements legislation).

C) ABUSE OF DOMINANT POSITION AND ABUSE OF ECONOMIC DEPENDENCE

C.1. Abuse of dominant position

Holding a dominant position is not in itself illegitimate; however, it is not permitted to exploit it for the purpose of restricting competition. Indeed, the dominant enterprise is given a position of special responsibility by the legal system in ensuring the proper functioning of the market. On this basis, such a group of firms are prohibited from conduct that is instead permitted for other rival firms operating in the market holding less significant positions.

In particular, firms that hold a dominant position within the European/national market or a relevant part thereof are prohibited from abusively exploiting that position to the detriment of competition. This prohibition refers to unilateral behavior adopted by one firm, although, in exceptional cases, a dominant position in a given market may also be held by several firms jointly (so-called collective dominance). Such a situation occurs when two or more firms, although independent, are linked by corporate ties (without, however, the firms constituting a single economic entity, i.e., a single enterprise, since in that case individual abuse of dominance could at most occur), contractual, economic or associational ties so close that they adopt a common course of action and are perceived by competitors and customers as a single dominant firm.

Dominance is identified on the basis of the relative position of the firm in the market and must be verified on a case-by-case basis, depending on the specific factual circumstances. So, it is possible that even a modestly sized firm may be considered to hold a dominant position if it operates in a market where, for example, there are not many competitors, and vice versa.

As a matter of prudence, it is considered that holding a *leadership* position with a market share of 40% or more of the relevant market may be an initial indicator of dominance, without prejudice to the need to conduct a more in-depth review based on the other characteristics of the relevant market. Thus, conservatively, market positions between 30 percent and 40 percent should also be monitored.

However, market share is not the only factor to be considered in determining whether a firm is dominant. For example, the following can also be considered for this purpose:

- The degree of market concentration,
- The existence of technical or legal barriers to market access,
- demand dynamics,
- The financial and technical strength of potential competitors,
- dimensional asymmetry relative to competitors,

- The lack or insufficiency of countervailing power on the part of buyers,
- vertical integration,
- economies of scale,
- The presence of a developed distribution and sales network,
- product diversification and thus the possibility of formulating combined product offerings,
- The control of infrastructure that is not easily duplicated.

The prohibition of abuse of dominance is an "open" provision, that is, a general prohibition of conduct with certain characteristics. Therefore, it is not possible to provide here a certain exhaustive list of what can be considered abusive conduct. This is an extremely complicated legal, economic and factual assessment to be conducted on a case-by-case basis according to the concrete circumstances.

In any case, the most recurrent cases of abusive conduct will be briefly described below. Specifically, possible abusive conduct by the dominant firm is conventionally divided into two categories: **exploitative abuse and exclusionary abuse**.

1. Exploitative abuse

Exploitative abuses include all those behaviors by which the dominant firm exploits its market power to the detriment of its business counterparts in order to make excessive and supra-competitive profits.

Typical exploitative abuses are:

- The implementation of discriminatory practices against suppliers or customers, i.e., not guaranteeing them equal opportunities to access conditions, discounts or promotions without objective justification for the differentiation.
- The imposition of excessively burdensome prices, *i.e.,* lacking a reasonable relationship to the value of the goods or service.

2. Exclusionary abuses

A dominant firm has the right to compete in the market on its own merits, even in a determined manner, but it is not allowed to leverage its position of strength to exclude or marginalize competitors, for example, by practicing conditions that cannot be replicated by those competitors, or by instrumentally hindering their staying in the market.

The most typical cases of exclusionary abuse challenged against companies are:

- The application of predatory, i.e., unprofitable, pricing as a strategy to determine the exit of competitors from the market;

- the imposition on customers of obligations to source exclusively, or for a large majority share, from the dominant firm, including through the granting of loyalty-enhancing discounts, which have the effect of preventing competitors from entering or remaining in the market. It is pointed out how the fact that such practices are tacitly or explicitly accepted (or even demanded) by a customer does not make them acceptable. What matters is the effect is the potential negative effect of the practice on competition and the fact that the practice itself was conducted by a dominant firm;

- the so-called tying practices, *i.e., tying and bundling*, consisting of the bundling of distinct goods or services (one at least of which is dominant) with the aim of strengthening or extending dominance to other markets. In this respect, in the case of dominance, it is not permitted to condition the sale of one product or service on the customer's acceptance of another product or service unless there is an objective justification, which must be evaluated on a case-by-case basis with the involvement of the Legal & Compliance Team;

- The refusal to grant access to a good, technology or service if it is indispensable to operate in the market. In particular situations, this may apply even if the good or service is covered by an intellectual property right.

In addition, with particular reference to the *Internet of Things* sector, a firm could also abuse its dominant position through related conduct:

a) to the **portability of** data to which they have access, and which are accumulated (often in massive quantities) by operating system vendors that are part of the ecosystem, and which can be used by the latter to improve their market positioning and to penetrate adjacent markets more easily. On this point, it is necessary to involve the Legal & Compliance Team in the preparation of privacy consents issued by the consumer for access to the contracted product or service;

b) to the **interoperability of** connectivity devices. This is particularly the case where the dominant firm owns a proprietary technology that allows operating system vendors to unilaterally control interoperability and integration processes in a way that limits the functionality of third-party smart devices relative to their own. On this point, it is necessary to involve the Legal & Compliance Team in relation to any protocols developed by trade associations that implement any industry standards aimed at promoting the interoperability of competing operators' smart devices, in order, among other things, to avert possible barriers to entry for competitors that do not join such associations;

c) to the ownership of essential patents ("***standard essential patents,***" or **SEPs**), i.e., patents that protect technologies essential to the implementation of standards recognized by

standard-setting bodies. Specifically, the dominant firm that is the owner of SEPs is required to commit to license such patents to its competitors on fair, reasonable *and non-discriminatory* contractual terms ("FRAND": *Fair, Reasonable and Non-Discriminatory terms*).

Finally, it should be remembered that the notion of abuse is broad and atypical: for example, both in the past and more recently, the AGCM has deemed it an abuse of a dominant position (or potential abuse) to exploit information held as a result of the *incumbent*'s position as the outgoing operator in cases where the *incumbent* had denied/delayed access to information in its possession to contracting stations interested in bidding for a contract.

On the other hand, vertical integration can also be a prerequisite for other forms of abuse, including the application of privileged business conditions to companies belonging to the *incumbent*'s corporate group (with discriminatory/exclusionary purposes against the former's competitors).

CASE SANCTIONED BY THE ANTITRUST AUTHORITY

A484 - UNILEVER/DISTRIBUTION OF ICE CREAM, Resolution No. 26822, Oct. 31, 2017

In the aforementioned resolution, the AGCM found a violation of Article 102 TFEU by Unilever for abuse of a dominant position consisting of an exclusionary strategy composed of extensive use of product exclusivity clauses and an articulated series of additional contractual conditions, commercial policy instruments and conduct, altogether aimed at maintaining, durably, the exclusivity of supplies on its customers and hindering, by this means, competition on the merits.

The case is of particular relevance because with it the Authority held Unilever directly responsible for the conduct implemented by its distributors towards the final retailers of Unilever products (in this case, bathing establishments and bars), having an exclusionary character towards other competing ice cream producers: this was due to particularly stringent contractual constraints, as a result of which, according to the Authority, Unilever's distributors were to be considered a sort of *longa manus of* the latter, and not, instead, independent economic operators.

The Decision was appealed to the Regional Administrative Court of Lazio ("**TAR Lazio**"), which rejected it in its entirety. Hearing the appeal, the Consiglio di Stato raised a request for a preliminary reference to the Court of Justice of the EU ("**CJEU**") aimed, *inter alia, at* clarifying whether the link between formally independent companies bound exclusively by contractual ties in the context of a supply-distribution relationship as in the case at hand, can integrate the notion of "*single economic entity*," and thus justify the approach followed by the AGCM, which sanctioned the supplying company for conducts carried out by its distributors, formally possessing a certain degree of organizational and commercial autonomy.

In its recent ruling of January 19, 2023 rendered in Case C-680/20, the CJEU confirmed the approach taken by the Authority, ruling that the abusive conduct of distributors who are part of the distribution network of a manufacturer enjoying a dominant position, such as Unilever, can be imputed to the latter under Article 102 TFEU if it is established that such conduct was not adopted independently by its distributors, but is part of a policy decided unilaterally by that manufacturer and implemented through those distributors.

CASE SANCTIONED BY THE ANTITRUST AUTHORITY

A544 - ERION WEEE/ANTICONCORRENTIAL COVERAGE, April 27, 2022.

The Authority initiated proceedings against the Erion WEEE consortium and other companies active in the collective management of waste electrical and electronic equipment ("**WEEE**") at the recommendation of a competitor for conduct consisting, according to the reconstruction of the reporting company, of an exclusionary abuse aimed at marginalizing/excluding the reporting company from the market for the collection of spent lead batteries and packaging waste, in violation of Article 102 TFEU.

Specifically, the whistleblower alleged the use of a contractual best price clause, as well as in the use of reserves generated from prior years' profits to offset current operating losses at the time of the report, so that consortium member producers could be offered environmental contributions that could not be replicated by competing systems.

The proceedings ended with the acceptance of the commitments submitted by the parties to abrogate the best price clause and not to use their reservations for exclusionary purposes, as well as to abrogate the exclusivity clause.

C.2 ABUSE OF ECONOMIC DEPENDENCE

Regardless of the fact that Candy may or may not be in some cases in a dominant position in the market, it is obliged not to adopt certain behaviors towards those suppliers and customers who are in a situation of "economic dependence" with respect to any of the companies of the Candy Group.

Typically, such a situation of "subservience" is determined when, due to the specific investments made, the supplier or distributor is bound to the relationship with Group Companies, having no alternative counterparts available to turn to in a brief time.

When, therefore, one of the Candy Group companies acts as a "necessary counterparty" to a supplier or customer, it must refrain from engaging in potentially abusive behavior, such as:

- The **termination** without reasonable notice of existing **business relations**, and this even if the contract allows it.
- The modification or imposition of **new conditions is unjustifiably pejorative and burdensome** for the contracting party.
- The **refusal to supply the third party or to source from the third party**.

This is merely an illustrative list, and thus does not exhaust the hypotheses of conduct that may be relevant for the purposes of the configurability of an abuse of economic dependence.

Violation of this prohibition implies the adoption of both civil and administrative law remedies. Under the former, the ordinary court can declare the agreement by which the abuse was conducted void as well as take precautionary measures or order the company responsible for the abuse to pay damages.

CASE SANCTIONED BY THE ANTITRUST AUTHORITY

A5309 - POSTE ITALIANE/CONTRACTS PROVIDING RECIPIENT SERVICE, July 20, 2021

The AGCM sanctioned Poste Italiane for more than 11 million euros for abusing economic dependence to the detriment of the company Soluzioni S.r.l., which had carried out, for many years, on behalf of Poste Italiane, the service of distribution and collection of correspondence in the city of Naples. The Authority objected to the imposition of contractual clauses that were unjustifiably burdensome and capable of giving rise to a substantial imbalance in the negotiating relationship between the parties. These were clauses designed to hinder/impede Soluzioni S.r.l.'s search for third-party principals, as well as the possibility of operating in direct competition with Poste Italiane. These contracts also provided for wide margins of variability between the supply of services to be rendered to Poste Italiane, a circumstance that would have forced Soluzioni S.r.l. to maintain an oversized structure under a substantial mono-contracting regime. Poste Italiane would also have demanded compliance with organizational rules and parameters such as to further stiffen Soluzioni S.r.l.'s corporate structure. As a result of these clauses, Soluzioni S.r.l. would have found itself in a situation of economic dependence, which Poste Italiane would have abused.According to the AGCM, therefore, Poste Italiane hindered the proper conduct of competitive play in the relevant market, because by its abusive conduct it excluded an operator that could have both provided its activity in favor of alternative postal operators and constituted a potential competitive constraint at the local level.

On the administrative side, on the other hand, the AGCM can adopt warnings or impose sanctions if it finds that the abuse distorts or is likely to distort competition in the market concerned. Importantly, **the AGCM is not required to prove the existence of economic dependence for the** purpose of establishing the abuse under consideration in the case of **widespread and repeated violations of the rules on overdue payment** in commercial transactions (under Legislative Decree 231/2002). Specifically, in commercial transactions, i.e., contracts having as their object the delivery of goods or the provision of services against payment of a price, it is not possible to agree on a payment term of more than 30 days, except in the cases and under the conditions expressly provided for.

CASE UNDER CONSIDERATION BY THE ANTITRUST AUTHORITY

A 550 - ORIGINAL MARINES FRANCHISING CHAIN, July 5, 2022

The AGCM has accepted the commitments submitted by Original Marines in the proceeding for alleged abuse of economic dependence initiated by Order No. 29930 of Dec. 3, 2021, upon the report of a number of companies previously holding *franchise* contracts with Original Marines and terminated at the time of the report.

The reconstruction provided by the whistleblowers identified Original Marines' *franchise* chain as a set of particularly onerous contractual conditions, characterized by a specific strategy whereby, once the franchisee started the business, it would encounter a system in which its own profitability would be sacrificed in favor of Original Marines, which would centralize on itself all the main business choices of the store, pouring its business risks on the franchisees and conditioning their ability to operate effectively in the market. In particular, Original Marines allegedly: (i) defined the value and composition of orders through computer-based control over the store; (ii) imposed promotions and resale prices; and (iii) prevented its franchisees from conducting sales promotion campaigns unless expressly authorized in advance, in order to "*avoid competition with the al tri stores participating in the Original Marines program.*"

In the aforementioned Order No. 30221 of July 5, 2022, the Authority accepted the commitments submitted by Original Marines, as they were, on the whole, suitable to remove the competitive concerns related to the profiles of abuse of economic dependence hypothesized in the initiating order, closing the proceedings without finding an infringement of Article 9 L. No. 198/1992.

Specifically, the measures in the commitments submitted by Original Marines can be summarized as follows:

(a) Elimination of the articles in the *franchise* agreements that included the purchasing constraints inherent in the minimum quantity and type of products to be purchased.
(b) Adjustment of *franchise* agreements to clarify that reassortment is made only at the request of the *franchisee* and without minimum purchase requirements, with the option of adopting, by mutual agreement between the parties, forms of automatic reassortment.
(c) adjustment of *franchise* agreements in order to clarify the *franchisee*'s autonomy in determining the resale price, without prejudice to the *franchisor*'s ability to develop a recommended price list.
(d) Adjustment of *franchise* contracts in order to clarify the *franchisee*'s decision-making autonomy with reference to the implementation of promotional campaigns.

D) M&A TRANSACTIONS

(I) PRIOR DISCLOSURE REQUIREMENTS FOR MERGER TRANSACTIONS.

When certain business-to-business M&A transactions have special economic and territorial significance, they are subject to prior scrutiny by the Antitrust Authorities and therefore must be mandatorily notified to the Authority prior to their implementation.

Prior notification requirements apply to operations that:

- configure a concentration, and
- exceed the turnover thresholds set by applicable antitrust regulations.

The Antitrust Authority's assessment of mergers is aimed at ascertaining whether they are likely to give rise to a substantial lessening of competition, particularly as a result of the creation or strengthening of a dominant position.

Configure mergers between enterprises and may be subject to notification requirements the following transactions:

- The merger of independent enterprises.
- The acquisition of control (exclusive or joint) of an enterprise (including acquisitions by individuals who control one or more enterprises, as well as by pure holding companies, i.e., companies engaged exclusively in the business of managing and holding financial interests).
- the acquisition of companies that directly or indirectly hold licenses, authorizations, concessions or other legitimizing titles allowing the exercise of an economic activity, as well as in some cases real estate companies.
- The acquisition of control of part of an enterprise, i.e., business branches, assets or other assets, to which turnover, even potential turnover, can be clearly attributed, such as:
  - business branches that hold certain administrative authorizations, concessions or other legitimizing titles that allow the exercise of economic activities.
  - The transfer of intellectual property rights, such as patents, trademarks, know-how or otherwise the exclusive license to use the same, even for a fixed term, the acquisition of a portfolio of customers.
  - the transfer of an industrial plant, mine, goodwill, technology, contracts, and a license accompanied by assets instrumental to the conduct of the business.
- rental or lease of a business, business or asset, even if the contract is of limited duration

(although it must be significant) and the parties have not concluded a further agreement for the subsequent purchase of the leased/rented business.

- The establishment of a *joint* venture ("*joint venture*") that permanently performs all the functions of an autonomous entity, and
- transactions that lead to changes in the quality of control (e.g., change from sole control to joint control or in a situation of joint control before and after the transaction, if the transaction itself results in an increase in the number of controlling shareholders or a change in their identity).

Notification obligations may arise vis-à-vis one or more national Antitrust Authorities, or vis-à-vis supranational Antitrust Authorities, *primarily,* vis-à-vis the European Commission ("**Commission**"). The competent Antitrust Authority and the notifiability of the merger transaction itself are generally determined on the basis of **turnover thresholds.** The following tables show the thresholds in force at the time of the drafting of this Code of Conduct (February 2023) in Italy and at the EU level. Please note that the thresholds are updated by AGCM on an annual basis and may change due to the rate of inflation.

ITALIAN BILLING SHEETS (updated March 21, 2022)

Merger transactions must be notified in advance to AGCM if:

- the total turnover achieved at the national level by all the enterprises concerned is more than € 517 million (a threshold updated annually by AGCM in line with inflation); and
- the total turnover achieved individually at the national level by at least two of the enterprises concerned is more than €31 million.

The Annual Market and Competition Law 2021 ("**Law No. 118/2022**"), which came into force on August 27, 2022, amended Article 16 of Law No. 287/90, giving the AGCM the **power to also examine those transactions** that, while not meeting the cumulative notification thresholds provided by the law, may result in concrete risks to competition, taking into account, in particular, the effects that the transaction could have with respect to the development and spread of small businesses characterized by innovative strategies. This is provided that the firms involved in the merger:

- exceed even one of the two cumulative turnover thresholds;
  o
- have a total worldwide turnover achieved by all the enterprises concerned of more than 5 billion euros.

In such cases, the Authority **may therefore request** the enterprise concerned to notify the transaction. Such a request, however, must be received by the enterprise **within six months** of the *closing of* the transaction.

POWERS OF INVESTIGATION AND SANCTIONS

The new Article *16-bis* of Law No. 287/90, introduced by Law No. 118/2022, allows the Authority, for the purpose of exercising merger control, to request information or the production of documents from the company concerned at any time and independently of the notification of the transaction.

In case of no response or untruthful response, the Authority may impose a fine of **up to 1 percent** of turnover on the enterprise concerned.

EU TURNOVER THRESHOLDS

A merger has a community dimension and must be notified to the European Commission when:

- the total worldwide turnover achieved by all the enterprises concerned is more than EUR 5 billion; and
- the total turnover achieved individually in the Community by at least two of the enterprises concerned is more than EUR 250 million;

unless each of the enterprises concerned achieves more than two-thirds of its total turnover in the EU within one and the same member state.

However, a concentration that does not exceed the above thresholds is of community dimension when:

- the total worldwide turnover achieved by all the enterprises concerned is more than EUR 2.5 billion; and
- in each of at least three member states, the total turnover achieved by all the enterprises concerned is more than EUR 100 million; and
- in each of at least three of the above member states, the aggregate turnover achieved individually by at least two of the enterprises concerned is more than EUR 25 million; and
- the total turnover achieved individually in the Community by at least two of the enterprises concerned is more than EUR 100 million;

unless each of the enterprises concerned achieves more than two-thirds of its total turnover in the EU within one and the same member state.

In both cases, the transaction is not notifiable to the Commission if each of the companies involved achieves more than two-thirds of its total EU-wide turnover within one and the same member state.

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trigger notification requirements in individual EU countries. In addition, it will be necessary in all cases (both in cases of EU dimension and in cases where such dimension is excluded) to verify the existence of notification obligations in non-EU countries.

In many jurisdictions, as long as the transaction has not been cleared by the relevant antitrust authority, it is prohibited to implement/implement it and proceed to conclude the relevant agreement (so-called *standstill* obligation).

In order to ensure the Candy Group's proper compliance with antitrust law, it is necessary to contact the Legal & Compliance Team prior to commencing negotiations in order to determine in a timely manner whether the transaction constitutes a notifiable merger and which Antitrust Authority(ies) have jurisdiction, so that the timing of the transaction can be properly regulated in the contracts.

II) RISKS ARISING FROM NON-NOTIFICATION

In case of non-compliance with the obligation of prior notification of concentration transactions, a twofold risk arises:

- **penalty**, as the Commission and AGCM can impose penalties, the amount of which can reach up to 10 percent or 1 percent, respectively, of the total turnover achieved by the company in the year preceding the year in which the challenge of non-notification was made.

- **of business**, since if at the outcome of the final assessment the merger raises critical issues such that it should be prohibited, both the Commission and the AGCM can require the companies involved in the transaction to take all necessary measures to restore the *status quo ante* and, if not possible, any other measures necessary to restore the previous effective competitive situation.

Keep in mind that, outside of Italy, at the European level and in most countries, mergers can only be carried out after obtaining clearance from the relevant antitrust authority (so-called *standstill* obligation).

Finally, attention should also be paid to the risk of so-called *gun jumping*: parties to a merger transaction should avoid engaging in conduct deemed likely to implement the transaction before they have made the notification and, in jurisdictions where a *stand-still* requirement applies, before they have obtained *clearance* (during the so-called *interim period*).

Otherwise, the transaction will be considered completed in the absence of *notification/clearance,* and enterprises may be sanctioned for violation of the *notification/stand-still* requirement.

TRICKS TO FOLLOW

In order to ensure the Company's proper *compliance* with antitrust law, ***the Legal & Compliance Team*** should be **contacted** before beginning negotiations regarding a merger transaction (in any of the forms exemplified above) so that:

a. determine in a timely manner whether the transaction constitutes a notifiable concentration and which Antitrust Authority(ies) have jurisdiction;

b. adequately regulate in contracts such an eventuality (e.g., through the inclusion of *condition precedent clauses* or price adjustment mechanisms for when antitrust clearance is subject to behavioral or structural remedies, such as tariff obligations or divestment of *assets*);

c. define the timing of the transaction (which can be diluted depending on, for example, the number of jurisdictions in which a notification needs to be made, the Antitrust Authorities involved, and the complexity of the transaction from a competitive perspective).

III) RISKS ASSOCIATED WITH INFORMATION SHARING IN M&A TRANSACTIONS.

As seen in Section I A.1, the exchange of commercially sensitive information between independent (especially competing) firms is likely to fall under the prohibition of restrictive agreements (Article 2 Law No. 287/90 and Article 101(1) TFEU).

This prohibition also applies to *pre-merger* contacts and the *due diligence* phase: it is not necessary, in order to incur a censurable practice, for the exchange of information to take place with the intent to restrict competition, nor for it to be part of a broader case.

To avoid the risk of a violation of the prohibition on the exchange of commercially sensitive information, it is essential that the parties to an M&A transaction take appropriate measures (e.g., confidentiality agreements, antitrust protocols, establishment of *Clean Teams*) **promptly as** early as preliminary contacts regarding the potential transaction and, in any case, prior to any exchange of potentially sensitive information.

FOCUS: CONFIDENTIALITY AGREEMENTS, ANTITRUST PROTOCOLS, CLEAN TEAM

➢ **Confidentiality agreements**

In M&A transactions where the seller, buyer, and target **are not competitors** (i.e., do not operate in the same product/geographic markets) a standard ***Non-Disclosure*** Agreement ("NDA") will normally be sufficient to limit antitrust risks. In that case:

- agreement shall prohibit any sharing/use of confidential information except as necessary to evaluate the transaction;
- the agreement should include an obligation to use the information exchanged only for the purpose of evaluating/trading the transaction;
- the agreement should prohibit the disclosure of the confidential information exchanged to any party other than the representatives of the parties directly involved in the evaluation of the transaction;
- the agreement should include an obligation to return or destroy confidential information if the transaction fails;
- agreement must be signed before any data/information exchange between the parties is initiated.

➢ **Antitrust protocols and *clean team***

Greater risks arise from transactions in which two or more of the parties involved **are** actual or potential **competitors with** each other. Possible solutions include:

- delay as much as possible the exchange of particularly sensitive information, which should only be shared at an extremely late stage of negotiations.
- Provide sensitive information only in aggregated, anonymized and/or historical form by avoiding sharing disaggregated, detailed and recent data.
- allow access to sensitive information only by external consultants subject to confidentiality obligations, while also adopting appropriate aggregation and reporting criteria to be adhered to by the external consultant in providing its advice to the company.
- Restrict access to sensitive information to so-called. Clean Teams.

Antitrust protocols are articulated confidentiality agreements that provide for, among other things, the designation of a Clean Team responsible for handling confidential data exchanged during negotiations.

The **Clean** Team is a working group made up of external consultants (e.g., legal and economic advisors, accountants, etc.) and/or representatives of the companies involved who normally do **not** hold business functions and are not involved in the day-to-day management of the business.

The function of the Clean Team is to receive exclusively internally the most commercially sensitive information that is conveyed by the parties in the context of *due diligence* (and in the information-gathering phase for the purpose of possible antitrust notification) as well as in any other confrontation forum (e.g., *pre-diligence* negotiations) and analyze this information for the purpose of evaluating the transaction, then provide representatives outside the Clean Team with only a summary of the results of these evaluations (without providing detailed data).

Antitrust protocols also identify and define **non-sensitive and/or historical information** to distinguish it from **recent antitrust-sensitive information**, the sharing of which will follow different rules:

- non-sensitive and/or historical information may also be received in full by representatives or employees of companies that are not members of the Clean Team;

- recent sensitive information (e.g., sales volume/value data, market structure and dynamics, firm positioning, competitor share estimates, average production capacity, average growth rates, trend lines, and other strategically valuable information) may only be circulated within the Clean Team. The sharing of such information with representatives or employees of companies that are not part of the Clean Team shall be conditioned on compliance with the following rules:

  - ✓ external consultants and/or the Clean Team may prepare reports/accounts that

may contain and/or reference recent sensitive information, but only if presented in aggregate (e.g., through the use of market averages, value forks, etc.);

- ✓ recent sensitive information may not be discussed at meetings attended by representatives or employees of companies that are not members of the Clean Team, except in accordance with the aggregation/reporting methods previously identified.

II. POSSIBLE STEPS TO MITIGATE THE CONSEQUENCES OF ANTITRUST WRONGDOING

The early detection of problematic situations from *an antitrust perspective* is crucial for four reasons:

- To **prevent** consummation of the antitrust offense;
- if the wrongdoing has already taken place, timely intervention **limits the duration** and **effects of the violation,** affecting the size of the penalty and compensation for any damage resulting from the wrongdoing;
- the reporting of wrongdoing and prompt repentance are relevant in **assessing the behavior of personnel in compliance with the rules** established by the Company, including for the purpose of adopting disciplinary and reward measures;
- **but more importantly,** the company has the opportunity to access **leniency programs** for both ongoing and already exhausted offenses, with respect to which the company's prompt response is crucial.

FOCUS ON LENIENCY PROGRAMS

An enterprise participating in a cartel, whether in progress or already concluded, may "self-report" by reporting its existence to the antitrust authorities in order to obtain elimination (if it is the first enterprise to contact the authorities) or a reduction in the penalty (if, although it is not the first, it provides useful information regarding the antitrust offense).

It is important to consider that *compliance* activity itself is closely related to leniency programs because an effective *compliance* strategy makes it possible to prevent or identify anticompetitive behavior. Indeed, in the latter case, the company concerned can report the identified infringement to the antitrust authority on the basis of the evidence gathered through the very operation of *compliance* programs*; the* **timelier and more detailed the report, the more the complainant company can aim for immunity.**

Therefore, it is reiterated that anyone who becomes aware of a possible antitrust violation is required to report it to the Legal & Compliance Team in order for the Company to consider joining a leniency program in a timely manner.

THE NEW TRANSACTION PROCEDURE (so-called *SETTLEMENT*).

Law No. 118/2022 introduced in Art. *14-quater* of Law No. 287/90 a procedure that allows affected companies that recognize that they have violated competition rules (by carrying out an abuse of a dominant position or participating in a cartel), to benefit from a reduction in fines.

III. DRAFTING OF BUSINESS DOCUMENTS AND COMMUNICATIONS

Without prejudice to full compliance with the antitrust principles and rules of conduct described above, failure to pay attention with regard to the language used by employees in commercial communications or internal memos could harm the Candy Group by generating the false impression that unlawful conduct for antitrust purposes is taking place. In particular, in the event of an investigation by an Antitrust Authority or the initiation of an administrative or judicial proceeding in the area of competition protection, the adoption of imprecise language could also make conduct that is not in fact illegal appear to be illegal.

Therefore, in all internal or third-party communications, it is necessary:

- Avoid using ambiguous language in documents containing information about competitors. The use of unclear expressions could give the false impression that such information was obtained from, or with the consent of, a competitor. The lawful origin of such information should be clear from the document;
- consult the Legal & Compliance Team in advance if the content of a written communication falls within the scope of this Antitrust Code of Conduct;
- consider each draft document as if it were to enter the public domain and as if it were in any case a final document;
- treat all e-mails as if they were official and public documents, keeping in mind that even if an e-mail or electronic file is deleted, it can be traced and reproduced in the course of an investigation or administrative or judicial proceedings;
- avoid speculating whether a particular conduct is unlawful or not;
- avoid giving the impression that decisions are made for reasons other than the pursuit of corporate interest;
- remember that it is forbidden to destroy electronic documents or files merely because it is believed that they may contain harmful or dangerous information.

IV. INVESTIGATIVE POWERS OF ANTITRUST AUTHORITIES

The Antitrust Authority and the European Commission are responsible for supervising compliance with Italian and European *antitrust* law. To this end, they have broad powers of investigation against companies suspected of violating competition law.

In more detail, they can:

- require enterprises to **provide information** on certain facts or circumstances, or to produce documents deemed relevant. This power is assisted by the provision of financial penalties for cases where the enterprise unjustifiably refuses to provide such information, or produces untrue documents;
- but more importantly carry out **inspections** at the premises of companies, including using the assistance of the Guardia di Finanza. As a rule, such inspections are carried out unannounced (so-called *dawn raids*) in order to directly view and extract copies of company documents deemed relevant to the ongoing investigation, including *e-mail* correspondence.

WHAT POWERS DO OFFICIALS HAVE IN CASE OF INSPECTION?

Officials are entitled to:

- inspect company premises, relevant land and company cars (exceptionally, officers may also enter the **domicile of executives, directors and other staff members**, but only on the basis of specific authorization by reasoned decree issued by the prosecutor of the place where the access is to be carried out);
- to view and take **copies of** documents, folders, diaries, travel documents and receipts, *e-mails* in personal electronic mailboxes (even if the holder is not present), *hard drives,* as well as data contained on *pen drives* and other company equipment (including *laptops*, *tablets*, telephones and *smartphones*), and this even if the documents contain confidential information;
- make use of its own computer forensics software and tools to search for relevant *documents/files* on the *servers* (or removed), temporarily block *e-mail accounts* (including outgoing *e-mails*), disconnect *PCs* from the network, remove and reinstall *hard drives*, asking for the cooperation of the Company's IT department;
- Ask questions relevant to the investigation to the people present and verbalize their answers;
- To affix seals to rooms that will be subject to subsequent inspection.

Officials are NOT entitled to:

- view and take documents that are clearly NOT pertinent to the investigation (as described in the inspection warrant and the attached decision),
- Viewing and taking documents covered by legal privilege, concerning interlocutions with outside attorneys;
- impose making statements about circumstances of which the respondent does not have precise memory or needs time to reconstruct;

WHAT HAPPENS IN CASE OF REMOTE WORK?

Also because of the health emergency situation from COVID-19 and the change in both working and inspection modes, in case an employee is, on the day of inspection, in agile/remote/smart working mode, it should be kept in mind that:

- officers are entitled to ask the employee in question to travel to the work location where the inspection is being conducted, bringing along company technological equipment (laptop, tablet, smartphone, etc.);
- where this is not possible (e.g., because of distance from the inspection site), officials usually *(i)* remotely access the data contained on the servers to extract copies, and *(ii)* may request to be connected by telephone or video conference to ask questions relevant to the investigation;
- as anticipated, exceptionally, officials may also gain access to the domicile of executives, directors and other staff members, but only if they have specific authorization with a reasoned decree issued by the prosecutor of the place where access is to be carried out.

POWERS OF INVESTIGATION AND SANCTIONS

According to the new paragraphs *2-bis* and *2-ter* of Article 12 of Law No. 287/90, introduced by Law No. 118/2022, in order to verify whether there are abuses or understandings, the Authority, at any time, can request the company to provide information or produce documents.

In case of no response or untruthful response, the Authority may impose a fine of **up to 1 percent** of turnover on the enterprise concerned.

With Legislative Decree No. 185 of November 8, 2021 (*ECN+* Directive), which amended Article 14 of Law No. 287/90 (paragraphs 5, 6, 7 and 8), measures were introduced to encourage companies and individuals involved in the investigation process to cooperate with the Authority.

In particular, the company and individuals to whom officials might turn (employees, exponents, managers...) are required **not to hinder or slow down the** Authority's **investigative activities, under penalty of** fines and penalties. Thus, provision is made for:

- **Penalty** for each day's delay since the request in order to force the recipient to respond to a request for information, appear at a hearing, submit to inspection.
  - **For individuals**: from 150 euros to 500 euros.
  - **For the enterprise**: up to 5 percent of the average daily turnover achieved worldwide during the previous fiscal year.
- **administrative fines** in cases of obstructing inspections, breaking seals affixed by officials, inaccurate or misleading responses to requests for information, unexcused failure to appear at hearings.

- **For individuals:** from 150 euros to 25,823 euros**.**
- **For the enterprise**: up to 1 percent of the total worldwide turnover achieved during the previous fiscal year.

ATTACHMENT 1 - *CONTACTS*

Antitrust Compliance Officer

[complianceantitrust@haier-europe.com]

ANNEX 2 - REFERENCE LEGISLATION

A) EU REGULATIONS

Treaty on the Functioning of the European Union-Part Three: Union Policies and Internal Actions-Title VII: Common Rules on Competition, Taxation and Approximation of Laws-Chapter 1: Competition Rules-Section 1: Rules Applicable to Undertakings-Articles 101 and 102 (formerly Articles 81 and 82 TEC).

Article 101 TFEU - AGREEMENTS

1. All agreements between undertakings, all decisions by associations of undertakings and all 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 consist of:

(a) directly or indirectly fix purchase or sale prices or other transaction conditions;

(b) restrict or control production, outlets, technical development or investment;

(c) allocate markets or sources of supply;

(d) apply dissimilar conditions for equivalent services in business dealings with other contractors, so as to result in a competitive disadvantage for the latter;

(e) make the conclusion of contracts conditional on the acceptance by other contractors of additional services, which, by their nature or according to commercial custom, have no connection with the subject matter of the contracts.

2. Agreements or decisions prohibited under this Article shall be invalid of right.

3. However, the provisions of paragraph 1 may be declared inapplicable:

- To any agreement or category of agreements between enterprises,

- to any decision or category of decisions of business associations, and

- To any agreed practice or category of agreed practices,

that contribute to improving the production or distribution of products or to promoting technical or economic progress, while reserving for users a fair share of the resulting profit, and avoiding

(a) impose restrictions on the enterprises concerned that are dispensable to achieve these objectives;

(b) give such enterprises the opportunity to eliminate competition for a substantial part of the products in question.

Article 102 TFEU - ABUSE OF DOMINANT POSITION.

It is incompatible with the internal market and prohibited, as far as it may be detrimental to trade between member states, for one or more enterprises to abuse a dominant position in the internal market or a substantial part thereof.

Such abusive practices may consist in particular:

(a) in directly or indirectly imposing unfair purchase, sales or other transaction conditions;

(b) in restricting production, outlets or technical development, to the detriment of consumers;

(c) in applying dissimilar conditions for equivalent performance in business dealings with other contractors, thereby resulting in competitive disadvantage to the latter;

(d) in making the conclusion of contracts conditional on the acceptance by the other contractors of additional services, which, by their nature or according to commercial custom, have no connection with the object of the contracts.

B) NATIONAL REGULATIONS

Law No. 287 of October 10, 1990 - Rules for the protection of competition and the market.

Art. 2. - Agreements restricting freedom of competition

1. Agreements and/or concerted practices between enterprises as well as resolutions, including those adopted pursuant to statutory or regulatory provisions, of consortia, associations of enterprises and other similar bodies are considered agreements.

2. Agreements between undertakings which have as their object or effect the prevention, restriction or substantial distortion of competition within the national market or a major part thereof, including through activities consisting of:

(a) directly or indirectly fix purchase or sales prices or other contractual terms;

(b) prevent or restrict production, outlets or market access, investment, technical development or technological progress;

(c) allocate markets or sources of supply;

(d) apply objectively different conditions for equivalent services in business dealings with other contractors, so as to result in unjustified competitive disadvantages for them;

(e) making the conclusion of contracts conditional on the acceptance by other contractors of additional services which, by their nature or according to commercial custom, bear no relation to the subject matter of the contracts.

3. Prohibited understandings are invalid for all purposes.

Art. 3. - Abuse of dominant position

1. Abuse by one or more enterprises of a dominant position within the national market or in a relevant part thereof is prohibited, and in addition:

(a) directly or indirectly impose unjustifiably burdensome purchase or sales prices or other contractual conditions;

(b) prevent or restrict production, outlets or market access, technical development or technological progress, to the detriment of consumers;

(c) apply objectively different conditions for equivalent services in business dealings with other contractors, so as to result in unjustified competitive disadvantages for them;

(d) make the conclusion of contracts conditional on the acceptance by other contractors of

additional services which, by their nature and according to commercial custom, have no connection with the subject matter of the contracts.

Art. 5. - Merger operations

1. The concentration operation is conducted:

(a) When two or more enterprises merge;

(b) when one or more persons in a position of control of at least one enterprise or one or more enterprises directly or indirectly acquire, whether by purchase of shares or elements of assets, by contract or by any other means, control of the whole or parts of one or more enterprises;

(c) when two or more enterprises proceed to establish a joint venture that permanently performs all the functions of an autonomous entity.

2. The assumption of control of an enterprise does not occur where a bank or financial institution acquires, upon the establishment of an enterprise or the increase in its capital, holdings in that enterprise for the purpose of reselling them on the market, provided that during the period of ownership of such holdings, however, not exceeding twenty-four months, it does not exercise the voting rights inherent in such holdings.

3. Where the object or effect of the operation to set up a concentrative joint venture is to coordinate the behavior of independent undertakings, such coordination shall be assessed in accordance with the parameters adopted for the assessment of restrictive agreements restricting freedom of competition, in order to determine whether the operation entails the consequences referred to in Article 6. In this assessment, the Authority shall take into account, in particular, the significant and simultaneous presence of two or more parent undertakings on the same market as the joint venture, or on a market located upstream or downstream of that market, or on a contiguous market closely related to that market, as well as the possibility offered to the undertakings concerned, through their coordination resulting directly from the establishment of the joint venture, of eliminating competition in respect of a substantial part of the products and services in question.

Article 6 - Prohibition of concentration restricting freedom of competition.

1. With respect to concentrations subject to notification under Article 16, the Authority shall assess whether they significantly impede effective competition in the national market or a relevant part thereof, in particular due to the creation or strengthening of a dominant position. Such a situation shall be assessed because of the need to preserve and develop effective competition taking into

account the structure of all affected markets and actual or potential competition, as well as the market position of the participating enterprises, their economic and financial power, the choice of suppliers and users their access to sources of supply or market outlets, the existence in law or in fact of barriers to entry, trends in the supply of and demand for the products and services in question, the interests of intermediate and final consumers, and technical and economic progress provided that it benefits the consumer and does not constitute an impediment to competition. The Authority may assess the anticompetitive effects of acquisitions of control over small enterprises characterized by innovative strategies, including in the field of innovative technologies.

2. The Authority, upon completion of the investigation referred to in Article 16, paragraph 4, when it finds that the transaction entails the consequences referred to in paragraph 1, shall prohibit the concentration or authorize it by prescribing the measures necessary to prevent such consequences.

C) OTHER FORECASTS

Law No. 192 of June 18, 1998 - Regulation of subcontracting in productive activities

Article 9 - Abuse of economic dependence. - *Article amended by Article 33 of Law 118/2022; amendments apply as of October 31, 2022.*

1. Abuse by one or more enterprises of the state of economic dependence in which a customer or supplier enterprise is, in its or their regard, is prohibited. Economic dependence is considered to be the situation in which an enterprise is able to bring about an excessive imbalance of rights and obligations in its business relations with another enterprise. Economic dependence is also assessed by taking into account the real possibility for the abusive party to find satisfactory alternatives on the market. Unless proven otherwise, economic dependence is presumed where an enterprise uses the intermediation services provided by a digital platform that plays a decisive role in reaching end users or suppliers, including in terms of network effects or data availability.

2. Abuse may also consist of refusal to sell or refusal to buy, imposition of unjustifiably burdensome or discriminatory contract terms, and arbitrary termination of existing business relations. Abusive practices carried out by the digital platforms referred to in paragraph 1 may also consist in providing insufficient information or data regarding the scope or quality of the service provided and in demanding undue unilateral benefits not justified by the nature or content of the activity performed, or in adopting practices that inhibit or hinder the use of different provider for the same service, including through the application of unilateral conditions or additional costs not provided for in the contractual agreements or licenses in place.

3. The pact through which the abuse of economic dependence is realized is void. The competent ordinary court shall hear actions on abuse of economic dependence, including actions for injunctions and compensation for damages. Civil actions that can be brought under this article shall be brought before the specialized business sections referred to in Article 1 of Legislative Decree No. 168 of June 27, 2003.

3-bis. Without prejudice to the possible application of Article 3 of Law No. 287 of October 10, 1990, the Competition and Market Authority may, if it finds that an abuse of economic dependence has relevance for the protection of competition and the market, also upon the report of third parties and following the activation of its powers of investigation and preliminary investigation, proceed with the warnings and sanctions provided for in Article 15 of Law No. 287 of October 10, 1990, against the company or companies that have committed said abuse.

In the case of widespread and repeated violations of the regulations set forth in Legislative Decree No. 231 of October 9, 2002, conducted to the detriment of enterprises, with special reference to small and medium-sized enterprises, abuse occurs regardless of the establishment of economic dependence.

Legislative Decree No. 231 of October 9, 2002. Implementation of Directive 2000/35/EC on combating overdue payment in commercial transactions.

Art. 4. - Payment terms.

1. Interest on arrears shall run, without the need for a notice of default, from the day after the deadline for payment expires.

2. Except as provided for in paragraphs 3, 4 and 5, the payment period may not exceed the following terms:

(a) thirty days from the date of receipt by the debtor of the invoice or a request for payment of equivalent content. Requests for formal additions or amendments to the invoice or other equivalent request for payment shall have no effect on the running of the time limit;

(b) thirty days from the date of receipt of goods or the date of performance of services, when the date of receipt of the invoice or equivalent request for payment is not certain;

(c) thirty days from the date of receipt of goods or rendering of services, when the date on which the debtor receives the invoice or equivalent request for payment is earlier than the date of receipt of goods or rendering of services;

(d) thirty days from the date of acceptance or verification, if any, required by law or contract for the purpose of ascertaining the conformity of the goods or services with the contractual provisions if the debtor receives the invoice or the equivalent request for payment at a time not later than that date.

3. In business-to-business transactions, the parties may agree on a longer term for payment than that stipulated in Paragraph 2. Terms longer than sixty days, provided that they are not grossly unfair to the creditor under Article 7, must be expressly agreed upon. The term clause must be evidenced in writing.

4. In commercial transactions in which the debtor is a public administration, the parties may agree, provided expressly, on a period for payment longer than that provided for in paragraph 2, ((when this is objectively justified by the particular nature of the contract or certain of its characteristics)). In any case, the terms referred to in paragraph 2 may not exceed sixty days. The term clause must be evidenced in writing.

5. The deadlines referred to in paragraph 2 are doubled: a) for public enterprises that are required to comply with the transparency requirements of Legislative Decree No. 333 of November 11, 2003; b) for public entities that provide health care and have been duly recognized for this purpose.

6. When there is a procedure aimed at ascertaining the conformity of the goods or services with the contract it may not last longer than thirty days from the date of delivery of the goods or

provision of the service, unless otherwise expressly agreed upon by the parties and provided for in the tender documents and provided that this' is not grossly unfair to the creditor within the meaning of Article 7. The agreement must be evidenced in writing.

7. This is without prejudice to the right of the parties to agree on payment terms in installments. In such cases, if one of the installments is not paid on the agreed date, the interest and compensation provided for in this Decree shall be calculated solely on the basis of the overdue amounts.

[...]

ANNEX 3 - SANCTIONS

Violation of the individual provisions and rules of conduct set forth in this Antitrust Code of Conduct by the Recipients (as defined above) constitutes a disciplinary offense.

For the investigation of infractions, disciplinary proceedings and the imposition of the relevant sanctions, the powers already conferred, within the limits of the respective delegations and competencies, to the Candy Group Management, in particular the HR Function, remain valid.

Candy Group management personnel, in the performance of their professional activities, have an obligation both to comply with and to ensure that their co-workers comply with the requirements contained in this Antitrust Code of Conduct.

The application of disciplinary measures is irrespective of the establishment and outcome of any investigative proceedings by the Competition Authority or other forms of judicial ascertainment.

The application of disciplinary sanctions is without prejudice to the Company's right to compensation for the damage suffered and any other form of protection provided by the legal system.

Members of the board of directors, members of the board of auditors, executives, other employees and Third Parties limited to the time and object of the activity performed in favor of the Company are subject to the disciplinary system.

It constitutes, among other things, conduct subject to disciplinary sanction to violate the measures to protect the reporter, to report a wrongdoing that proves to be unfounded, carried out with malice or gross negligence, and to violate other conduct specified in the reporting regulations.

Criteria for selection and commensuration of penalties

Where it is established that a disciplinary offense related to the compliance framework and the Antitrust Code of Conduct has been committed, a sanction appropriate to the type of violation committed and the position held and/or the duties performed by the perpetrator will be imposed on the person responsible, in full compliance with the provisions of any applicable CCNL.

The type and size of the penalty shall also be proportionate to the seriousness of the established fact and shall be determined considering:

- Of the manner of the conduct.
- Of the harmful consequences and/or risks involved.
- of the willful or negligent nature of the violation and the intensity or degree of the subjective element.
- Of the behavior following the violation.

- Of the responsible person's disciplinary record, if any.
- Of the possible commission of multiple violations with the same conduct.
- Of the possible complicity of more than one person in the commission of the violation.

Penalties applicable to directors

In the event that it is established that a violation has been committed by a director of the Company, taking into account the seriousness of the act and the other criteria mentioned above, one or more of the following sanctions may be imposed:

- The statement of censure is recorded in the minutes of the board meetings.
- the formal warning;
- The revocation of any proxies given to the director.
- the convening of a shareholders' meeting to adopt a resolution to remove a director from office, constituting, the violation ascertained, just cause for removal from office.

In the event that the violation is ascertained against a director who is also linked to the Company by a subordinate employment relationship, in addition to the sanctions mentioned above, if the conditions are met, one or more of the sanctions referred to in the following paragraphs (sanctions applicable to managers and/or employees) may be imposed. In such a case, if a dismissal for just cause is adopted, a shareholders' meeting must be convened to adopt a resolution to dismiss the director for just cause.

Penalties applicable to mayors

In the event that a violation is found to have been committed by an auditor of the Company, considering the seriousness of the act and the other criteria mentioned above, one of the following sanctions may be imposed:

- The statement of censure recorded in the minutes of the meetings of the board of auditors;
- the formal warning;
- the convening of the shareholders' meeting to adopt a resolution to dismiss the office for cause, subject to the approval of the court constituting, the established violation, just cause for dismissal of the office.

Penalties applicable to managers

In the event that it is ascertained that a disciplinary offence has been committed by a manager of the Company, the sanction deemed most appropriate may be imposed in accordance with the provisions of current legislation and the applicable National Collective Bargaining Agreement, taking into account the seriousness of the fact and the other criteria mentioned above.

In particular, where the disciplinary offense constitutes a crime or, in any case, is so serious as to irreparably damage the relationship of trust with the Company, the perpetrator will be subject to dismissal for just cause.

Penalties applicable to other employees

In the event that it is ascertained that a cadre, employee or worker of the Company has committed a disciplinary offence, considering the seriousness of the fact and the other criteria mentioned above, one of the following sanctions may be imposed, in full compliance with the applicable CCNL:

- the verbal warning;
- the admonition;
- A fine of not more than three hours' hourly pay calculated on the minimum wage scale;
- suspension from work and pay up to a maximum of three days;
- Dismissal, with or without notice.

The warning consists of a verbal dispute of the offense and a warning against repeating it.

Admonition consists of a written challenge and censure of the offense.

Penalties applicable to Third Parties

In the event that it is ascertained that a violation has been committed by Third Parties, a warning will be issued to promptly comply with the Code of Conduct and other supplementary or implementing provisions, or the activation of the remedy provided for in the contracts that bind the Third Parties to the Company deemed most appropriate, taking into account the seriousness of the fact and the other criteria mentioned above.

Remedies that may be provided in contracts that bind the Company to Third Parties include but are not limited to and in order of severity, warning, application of a penalty, suspension and early termination of the relationship.

Proceedings applicable against managers and other employees

The Company's Human Resources Department is the body competent to impose disciplinary sanctions against all employees, in accordance with the procedure set forth in Article 7 of the Workers' Statute and the applicable National Collective Bargaining Agreement.

This procedure shall also apply where it is reported that a disciplinary offence has been committed by a director also linked to the Company by a contract of employment. If, as a result of the proceedings, the sanction of dismissal is imposed, the board of directors shall convene the shareholders' meeting without delay for the adoption of the revocation measure.

Proceedings applicable against directors and auditors

In the event of a violation by one or more directors who are not in an employment relationship with the Company and/or auditors, the human resources department, having also heard the Antitrust Compliance Officer, will inform the board of auditors and the board of directors.

Unless there are special reasons for urgency, within fifteen days of receiving the report, the board of directors shall summon (by written notice) the alleged violator to appear at a board meeting. The summons must be in writing and signed by the chairperson of the board of directors or at least two directors not involved in the disciplinary proceedings. In the event that the alleged violator is the chairperson of the board of directors and/or there are not at least two directors not affected by the disciplinary proceedings, the board meeting will be convened by the chairperson of the board of auditors.

At the meeting, which members of the board of auditors and the Antitrust Compliance Officer are also invited to attend, the alleged perpetrator of the disciplinary offense will have the right to defend himself or herself orally and by submitting any written deductions.

The board of directors, even after further investigation as deemed appropriate, will decide either to dismiss or to apply a disciplinary sanction, giving reasons for the decision.

In case of proceedings against a director of the Company, the board of directors will deliberate with the abstention of the alleged perpetrator of the disciplinary offense.

A copy of the minutes of the meeting will be forwarded to the interested party as well as to the Antitrust Compliance Officer.

Procedure applicable against Third Parties

Disciplinary sanctions are imposed against Third Parties by the director of the organizational unit of the Company managing the contractual relationship concerned.

Specifically, within ten days of receipt of the report, the director of the organizational unit that manages the contractual relationship, in agreement with the legal function - after notifying the contractual counterparty and, if different, the alleged perpetrator of the disciplinary offense - activates the contractual remedies provided for in the contract that binds the Third Party to the Company deemed most appropriate.

The disciplinary measure

The measure by which the disciplinary sanction is applied must be adequately justified. It must be communicated in each case to the Antitrust Compliance Officer.

Disciplinary measures are communicated by the personnel department to the person concerned.

The Company's Human Resources Department keeps track of sanctions imposed by establishing and updating the register of disciplinary sanctions imposed.

Filing of proceedings

Any filing must be reasoned and communicated to the Antitrust Compliance Officer.

When the report of disciplinary offense concerns a director of the Company, the dismissal order must be communicated to the board of auditors and the shareholders' meeting.

Retention of documentation

The Board of Directors shall ensure the preservation of all documentation regarding pending and concluded disciplinary proceedings, including archiving, ensuring its confidentiality pursuant to Regulation No. 2016/679 and Legislative Decree No. 196/2003 (as subsequently amended by Legislative Decree No. 101/2018).