Antitrust Compliance Handbook

Luigi Lavazza S.p.A.

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Contents

I GENERAL PART

Introduction to the Antitrust Compliance Handbook

The set of laws and regulations governing fair competition, or *antitrust laws* (as it is known in America), guarantees the proper operation of markets and competition, protecting the freedom of enterprise of business ventures, thus promoting social well-being and protecting consumers.

Competition laws set strict and clear limits to collusion between companies and to their individual or collective market power. The aim is to prevent businesses from engaging in anti-competition conducts, such as abuse of dominant market position, establishment of cartels (or other agreements that restrict competition) or other concentration operations that significantly hinder effective competition. These conducts, in fact, lessen competitive pressure and thus inhibit the implementation of the dynamic process of rivalry between businesses, which constitutes the foundation of the effective functioning of the market.

The companies within the Lavazza Group (collectively, "Lavazza" or the "Group") hold the principles of free competition to of fundamental importance, and place them at the core of their corporate culture. In carrying out their work duties, the employees of Lavazza are therefore under obligation to fully comply with said principles and act in line with antitrust regulations, as failure to do so exposes them to the risk of serious disciplinary measures.

This Antitrust Compliance Handbook (the "**Antitrust Handbook**"), rooted in the competition laws applicable in the European Union ("EU") and Italy, constitutes a central element of Lavazza's Antitrust Compliance Programme, aimed at preventing antitrust risks, through which Lavazza intends to renew and strengthen its commitment to fully comply with the laws protecting competition, as set forth in the Code of Ethics and in the *Guide for Antitrust Compliance*, available on the Company's Intranet under the **"Business Ethics & Compliance"** Section.

The Antitrust Handbook provides a detailed illustration of the antitrust laws in force in the EU and Italy, with the aim of ensuring a widespread understanding of antitrust issues within the Group, and increasing the awareness of Lavazza's employees of the anti-trust risks connected to their activities.

The Antitrust Handbook is therefore a reference guide for the use and benefit of the Group's employees who, on behalf of Lavazza, are engaged in dealings with competitors, clients, suppliers, and other stakeholders.

The purpose of the Handbook is to enable employees to effectively identify – independently or with the assistance of the *Antitrust Compliance Officer* (see § 2.1 below) – **conducts that may violate competition law before said violations are committed.**

On this regard, we should firstly note that making an assessment as to whether a conduct is legitimate under antitrust laws, will in most cases require a complex analysis of the factual circumstances, the applicable laws, and the interpretation and application of said laws by the competent authorities, whether administrative or judicial. Therefore, when becoming aware of a potential antitrust risk, the employees of Lavazza are in any case required to contact the *Antitrust Compliance Officer*, who will provide the needed assistance for assessing such risk, with the aid of external legal advisers where necessary.

2. Ensuring Awareness and Full Compliance with Antitrust Laws

The main **objectives** of the Antitrust Handbook are

- ensuring that Lavazza acts **in full compliance with antitrust regulations**;
- **illustrate to all the employees of Lavazza the key principles of antitrust law**, promote the employees' accountability, and strengthen their commitment to avoiding conducts that may (potentially) have anti-competitive implications;
- offer **practical examples of the main conducts** which, at least potentially, may be in contrast with antitrust law; and
- provide **operating instructions for minimising antitrust risks** within the Group's specific areas of operation;

Before moving to a practical illustration of the conducts that should be adopted or avoided to ensure compliance with antitrust regulations, it is important to highlight two essential tools to ensure the effectiveness of the Antitrust Handbook:

- the role of the *Antitrust Compliance Officer*, and
- the targeted and periodic *antitrust training sessions*.

2.1 Antitrust Compliance Officer: position and duties

Based on the premise that anyone who works for or on behalf of Lavazza is held to comply with the Antitrust Handbook, Lavazza has appointed - by resolution of the Board of Directors of the Parent Company Luigi Lavazza S.p.A. - the *Antitrust Compliance Officer* ("ACO") of the Group in the person of **Avv. Paola Pinardi**, *Corporate Business Senior Counsel* within the Legal and Corporate Affairs Department.

The ACO is Lavazza's internal officer **in charge of the implementation of the Antitrust Handbook.** In order to fulfil their duties properly and in a timely manner, the ACO may use the assistance of other members of the Legal and Corporate Affairs Department and other corporate supervisory bodies.

The ACO may, in approaching questions and/or activities they may from time to time find necessary, seek the assistance of external legal advisers specialised in competition law (the "External Legal Advisors").

This being said, the ACO shall be the first point of contact for the Group's employees in case of any doubt as to whether or not a specific conduct (including the conduct of suppliers, clients, or competitors) is compatible with antitrust law.

The duties of the ACO shall also include:

- **planning** and **organising antitrust training activities** (see below for more details);
- **checking**, before any action is taken, whether Company resolutions, agreements, or market practices that may present critical profiles are compatible with antitrust law;
- **taking note of any doubts or questions as to whether initiatives or conducts reported by employees are compliant with antitrust law**, so as to fine-tune the specific countermeasures that need to be put in place and, where needed, modify the Antitrust Handbook so as to tailor its provisions to Lavazza's objective needs;
- constant **monitoring** of **legislative changes** and **antitrust** case-law, so as to make sure the Antitrust Handbook is valid and updated at all times;
- providing **assistance** to (and supervise the) **activities of competition authority officials** in case of unannounced inspections to Lavazza's premises (see below);
- **reporting** any episodes brought to the attention of the ACO concerning the possible violation of antitrust laws **to the corporate top management** (i.e., the Board of Directors of the various Group companies);

In order for the ACO to be able to carry out their tasks as effectively as possible, it is important that **anyone who has any __doubts, questions, need for clarifications or indications__** regarding the compatibility of a given conduct with antitrust laws **__requests the assistance of the ACO__** (in fact, you are expressly invited to do so). The ACO may, in turn, ask for the assistance of the External Legal Advisers when dealing with particularly complex matters or issues falling within the so-called “grey areas”.

To this end, the ACO may be contacted by the employees of the Group at all times, and may be reached via e-mail (for questions dealing with the implementation of the Antitrust Handbook): antitrust@lavazza.com.

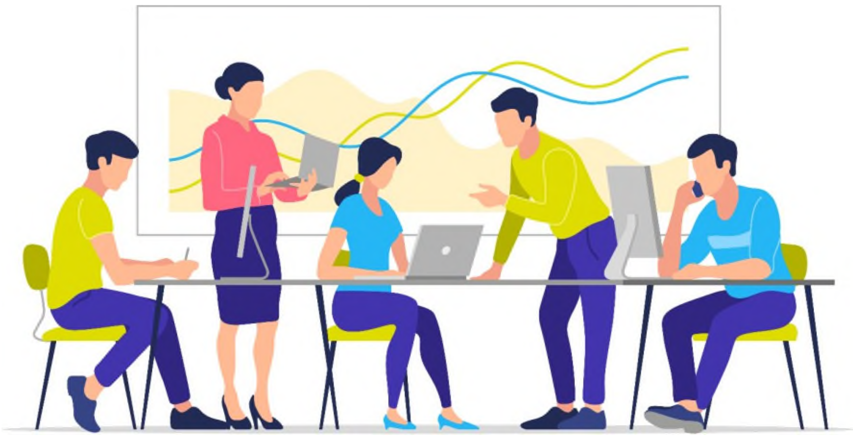
The ACO is also the appointed recipient of reports, including anonymous ones, of conducts deemed to be conflicting with the Antitrust Handbook.

Anyone, irrespective of their position with Lavazza and/or the position of the third-party they wish to report, who wishes to use this reporting mechanism should know that they shall not, on account of such report, be subject to any form of retaliation, discrimination or adverse consequence (Lavazza reserves the right to implement the opportune disciplinary measures only where a due inquiry in the matter should reveal bad faith and a clear defamatory intent on the part of the reporting party), and that their identity shall be kept confidential.

2.2 Periodic Training Sessions

The ACO is also in charge of providing antitrust training to the members of staff of Lavazza.

To this end, the ACO will organise classroom and on-line training sessions on antitrust issues, including by analysis specific aspects thereof, providing indications on the precautions and/or actions that need to be put in place so as to minimise the risk of incurring in possible violations of antitrust laws. On this regard, you may reach out to the ACO to suggest topics or practical questions which you think are worth a closer examination and/or general consideration. Antitrust training sessions shall be organised on a yearly basis with the assistance of the Group’s HR Department, and shall be held by the ACO, or, where deemed necessary and/or opportune, by the External Legal Advisers.



Attendance to said training sessions shall be mandatory for specific members of the Group's staff based on the specific topic discussed (but will in any case be optional for other members of staff). The ACO shall create and keep a register to keep record of the members of the Lavazza's staff who take part in training sessions. In case of unjustified absence from mandatory training sessions, employees shall be invited to provide an explanation to the ACO, who, where opportune, shall notify the top management.

2.3 Disciplinary Measures

Lavazza shall take appropriate disciplinary measures, in line with the provisions of the Code of Ethics and the internal policies therein specified – and namely, the Employee Code of Conduct and the Code of Business Conduct - and in accordance with the laws applicable **to its top management and employees** (i) who **engage in conducts in breach of antitrust laws** and this Antitrust Handbook, and/or

(ii) who **fail to report to the ACO** any violations, or who threaten or engage in acts of retaliation against anyone who has reported violations. The disciplinary measures applied range from a mere formal warning to termination of employment based on the seriousness of the violation carried out.

ANTITRUST RULES

3. General Notions

Competition Law is divided into **three macro areas**[1]

1

Prohibition of Restrictive Agreements

These are provisions that prohibit agreements or concerted practices **between two or more firms** operating within the same or a different level of the production chain, or decisions by associations of enterprises which are aimed at *or* produce the effect of distorting the otherwise normal competitive dynamics in the market (such as the fixing of selling prices, the allocation of markets or customers, etc.);

2

Prohibition Against Abuse of Dominant Position

These are provisions that prohibit anticompetitive practices (such as imposing unreasonably burdensome terms of contract, limiting production or access to the market, discrimination, etc.) put in place **unilaterally by one undertaking** which, due to its strong market position and/or other factors, enjoys market power and can therefore act independently from competitors, suppliers, and customers (a "dominant" position);

3

Ex-Ante Merger Control

These are provisions under which, once certain turnover thresholds are exceeded by the undertakings involved, any transactions that give rise to a **structural change** of the market (mergers, creation of joint ventures, acquisition of control, etc., known as "business concentrations") must be disclosed ex-ante to the competent antitrust authority so that the latter may ensure that said business concentration will not limit competition, enabling the new merged undertaking to exercise significant market power, by increasing prices or practising business conditions that are harmful to counterparts.

The laws and regulations on fair competition apply only to conducts engaged in by organisations, meaning any subject (whether a private or public entity or a natural person) who carries on a n activity of an economic nature, regardless of their legal form or how they are funded. In compliance with the economic character of this notion, two or more distinct companies are regarded as a part of one single undertaking when their business conduct is determined by one

1 For the mere sake of comprehensiveness, we should note that the EU has in place a set of provisions to regulate funding in the form of *State Aids*, that is, any aid granted, in any form but by using public resources, by EU Member States, and which effect is to confer gratuitous benefit on certain firms or industries with respect to their competitors.

common controlling company, or when one is directly or indirectly controlled by the other.

This "broader" notion of undertaking means that agreements between companies within the same group are not, as a rule, relevant for the purposes of antitrust law, based on the fact that such companies are not in any case in competition with each other. In practical terms, this means that the prohibition against restrictive agreements does not apply to agreements between companies within the same group, which are thus not *independent* of each other.

This Antitrust Handbook focuses on the prohibition against agreements restricting competition and the prohibition against the abuse of dominant position.

With regard to this latter prohibition, we should note that, as of today, no competition authority has ever found Lavazza to have a dominant position in any of the relevant markets in which it operates for the purpose of antitrust laws. At the same time, given that the Group holds significant market positions (and is a market leader in some cases) within certain product and geographical segments, it seems appropriate to also provide the Group's employees with detailed information on this area of competition law.

As to the provisions that regulate business concentrations pertain to extraordinary business decisions and thus compliance with said provisions come within the purview of top-level management, after consulting the ACO.

This Antitrust Handbook makes express reference to EU law only, it being understood that the substance herein illustrated substantially apply also to the corresponding national laws. EU laws are implemented at EU level by the European Commission ("**Commission**"), but they are directly applicable also in each EU Member State by local competition authorities; in Italy this authority is the *Autorità Garante della Concorrenza e del Mercato*, with headquarters in Rome ("**AGCM**").

This being said, at EU level the prohibitions against restrictive agreements and the abuse of dominant position are set forth under Articles 101 and 102 of the Treaty on the Functioning of the European Union ("**TFEU**"), whereas in Italy they are established under Articles 2 and 3 of Law No. 287/1990.

With regards to the Group's companies who operate outside the European Union, such as the United States, Lavazza reserves, in the near future, to adopt a dedicated antitrust compliance handbook which, though largely duplicating the contents of this Antitrust Handbook (as the fundamental principles of competition law are common across the various national legal systems), will also take into account for the specific application of competition laws in those jurisdictions.

4 Prohibition of Restrictive Agreements

The Prohibition. The first paragraph of Article 101 TFEU expressly prohibits any <u>agreements</u>, <u>concerted practices</u> between independent undertakings, and <u>decisions by associations of undertakings</u> which may affect trade between Member States and which, <u>by object or effect,</u> result in the prevention, restriction or distortion of competition within the internal market.

In the context of antitrust law, the notions of «agreements», «decisions by associations of undertakings» and «concerted practice» (included within the wider notion of "agreements") are extremely broad. In detail,

- the notion of **agreement** applies irrespective of the legal form thereof (and is unconnected to the civil law definition of agreement). Thus, even a simple "handshake" or simple verbal agreements can be sufficient for the notion of "agreement" to apply (also referred to as "*meeting of the minds*");

- **concerted practice** is a form of coordination between undertakings which, without having reached the stage where an agreement properly so-called has been concluded, knowingly substitutes practical cooperation between them for the risk of competition. For concerted practice to be deemed to exist, the parties taking part therein must thus *knowingly* act *in concert* (this is the element that sets concerted practice apart from parallel behaviour);

- the notion of **decisions by associations of undertaking** (such as trade associations, consortia, chambers of commerce, business federations, etc.) embraces all decisions, including non-binding, that are adopted by an association of undertakings and which objective is to influence the financial behaviour of the companies within the association, distorting competition.

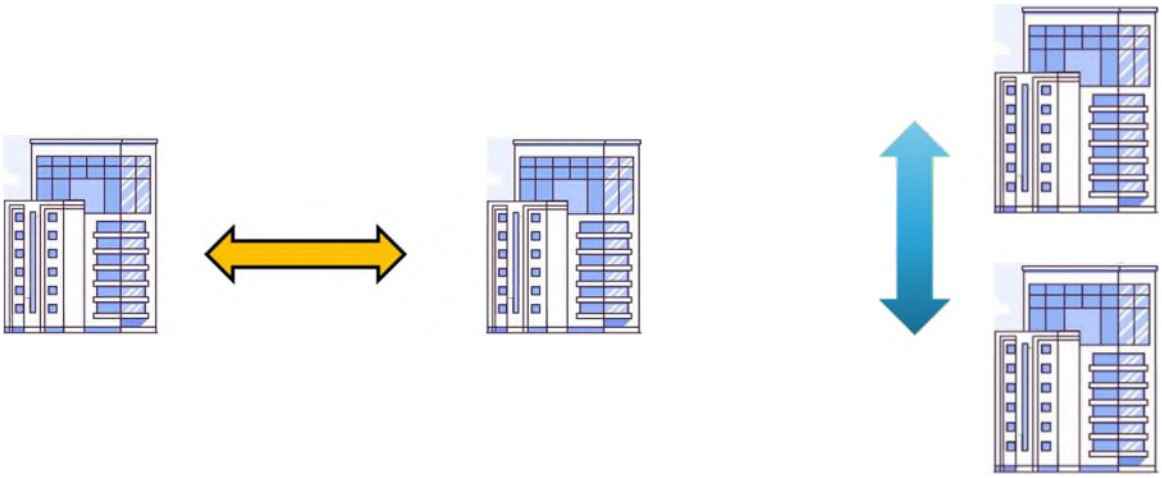
Restrictions by Object or Effect. As seen above, an agreement can restrict competition when it is aimed or when it has the effect of restricting competition.

An agreement is deemed restrictive when it is aimed, by its very nature, to restrict competition. This is a rather limited number of practices (known as hardcore restrictions), mostly coinciding with (i) **price-fixing**; (ii) **allocation of markets and/or customers**; (iii) **output limitation**; (iv) **bid rigging**; and (v) **bid rigging**; and (v) **boycotting**.

Where the object of an agreement is not harmful to competition to a degree such as to make such agreement and of itself restrictive, the effects thereof must then be examined, and can be prohibited only in the presence of all the elements giving evidence that competition was in fact significantly prevented, restricted, or distorted. To confirm that an agreement has an anti-competitive effect, in other words, the agreement's actual impact on the market must be taken into consideration, in light of the specific characteristics of the relevant market, of the companies that currently operate in or could enter the market, the services offered, etc. If you are concerned that an agreement, or more generally an arrangement in which Lavazza is involved may have an anti-competitive effect, you should immediately alert the ACO, who, after confirming the plausibility of the matter at issue, will take action and, where appropriate, ask for the assistance of the External Legal Advisers.

The possible restrictive effects of the arrangement are analysed by also taking into account arrangements with a restrictive object. In this case, a demonstration that there is an actual restrictive impact on the dynamics of competition has relevance not so much in terms of establishing a breach of the law, but rather in terms of the quantification of the penalty which may be imposed (which may, in this case, be higher).

"Horizontal" or "Vertical" Agreements *Horizontal* agreements occur between companies that are in direct competition with each other, or, in other words, companies that operate at the same level in the production or distribution chain (such as between two or more producers of the same goods or providers of the same service). This type of agreements, even when consisting in a mere exchange of sensitive information, may easily give rise to a restriction of competition by object.



Agreements are *vertical* when they are entered into between companies operating at different levels of the production or distribution chain (such as between producers and retailers). Normally, these latter agreements are less likely to give rise to a restriction of competition, because: (i) they are entered into between companies that are not in direct competition with each other; and (ii) they may generate pro-competitive effects by increasing efficiency, ultimately to the benefit of customers/consumers. However, vertical agreements may also be restrictive, for instance when they restrict the commercial freedom of the parties (fixing retail prices) and/or intrabrand competition (between distributors of the same manufacturer) or interbrand competition (between producers of different brands).

Consequences in Case of Violation The violations to the prohibition of anticompetitive agreements may be punished by the competition authorities through the imposition of monetary administrative penalties, which may be very high (up to 10% of the consolidated turnover). Pursuant to the second paragraph of Article 101 TFEU, agreements found to be restrictive shall furthermore "be automatically void". This penalty normally affects the provisions that are in direct conflict with the prohibition of restrictive agreements, and not the entire agreement containing said provisions, unless these latter cannot objectively be separated from the rest of the agreement.

In addition to the above, far more serious consequences may ensue. These include **reputational damage or claims for damage compensation.**

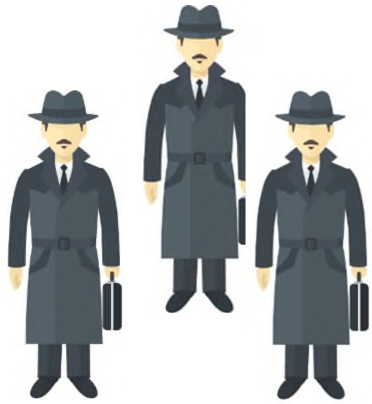
Example: the truck manufacturing companies involved in the cartel sanctioned by the Commission in 2016, imposing fines totalling 2.9 billion Euro, may also stand as defendants in actions for damages with an overall loss that would exceed 50 billion Euro.

Exemption from the Prohibition The third paragraph of Article 101 TFEU makes an exception for agreements which, in spite of being restrictive, produce effects that contribute to improving competition (which is almost never the case for restrictions defined as *hardcore*). These agreements may individually be exempted from the application of the prohibition under Article 101(1) TFEU. In order to benefit from this exemption, the following conditions must *all* be met:

- the agreement contributes to **improving** the production or distribution of goods or to **promoting** technical or economic progress;
- consumers or clients are allowed a **fair share** of the benefit resulting from the agreement;
- the agreement does not contain restrictions which are **not indispensable** to the attainment of the virtuous result contemplated by the parties; and
- the agreement does not afford such undertakings the possibility of eliminating competition in respect to a **substantial** part of the products in question.

The assessment of the above criteria is based upon a complex analysis of legal, economic, and factual elements, and thus requires the assistance of the ACO (and possibly the assistance of the External Legal Advisers).

4.1 Cartels



Cartels are commonly defined as **horizontal agreements**, typically secret, **aimed at reaching a level of coordination between competitors through basic competitive leverage** (e.g., **prices, quantities, customers, territories**).

These agreements constitute the most serious breach of competition law, and are thus severely reprimanded by the antitrust authorities, even when they don't actually produce the effect of distorting the market and even when the companies involved did not actually implement the agreed actions.

Taking part in a cartel is prohibited even when participation is merely passive (i.e., without providing sensitive information to competitors or without the intention of implementing the actions agreed with the other competitors).

Example: In Case T-558/08, *Eni v Commission*, the EU General Court, in line with settled case-law, upheld the Commission's decision to impose fines on Eni for taking part in the meetings of a cartel, even though Eni never disclosed any information to cartel members on its pricing policies, nor did it take into consideration the information it received in said meetings to determine its prices (as such prices remained anchored to objective parameters, and were not affected by the cartel in any way). According to the EU General Court, by participating in the meeting without publicly distancing itself from what was discussed, Eni gave the other participants reason to believe that it subscribed to what was decided there and would comply with it. According to the EU General Court, it does not matter whether or not the conclusion of the agreement or the pursuit of the concerted practice was in the commercial interest of the undertakings concerned.

In case of doubt as to the scope of the prohibition against horizontal agreements restricting competition, please contact the ACO to receive an opinion - including through the involvement of the External Legal Advisers - based on the specific circumstances of the case.

Wherever there is any suspicion that the employees of Lavazza are involved in a cartel, the ACO must be informed immediately so that they may properly assess the situation.

Some of the main **types of horizontal agreements restricting competition** are detailed below.

Price Fixing and Other Contractual Conditions Prices are one of the main strategies used by an enterprise to exercise competitive leverage. Therefore, any concerted practice with competing undertakings which affects pricing strategies (including only potentially or indirectly) is a serious breach of antitrust laws.

This is an absolute prohibition. It does not matter, therefore, whether the agreement is aimed at lowering prices or is grounded on the intent of offering a benefit to customers, or whether or not the parties implement that which was agreed upon.

The prohibition against price fixing encompasses more than sale prices in the strict sense, as it includes overcharges, promotions, discounts, rebates, business margins, credit or guarantee terms, service fees, accessory charges, agents' commissions and any other element which may contribute to the determination of the final price.

Competing undertakings are therefore **subject to the following prohibitions**:

a) discussing current or future prices;

b) agreeing on final prices (or agreeing not to change them for a certain period of time);

c) coordinating on time-frames for implementing price variations, whether increasing or decreasing.

Limiting Production Capacities or Investments Agreements aimed at limiting production capacities or acting as a brake on investment heavily affect the competitive forces of the market and are therefore strictly prohibited.

Competing undertakings are prohibited from

- agreeing on sale quotas or market shares;
- agreeing on sales volumes;
- agreeing on the closure of production facilities (including by alternating closures) or on not to open new facilities;
- encouraging a competitor's exit from the market;
- agreeing on limiting research and development expenses;
- agreeing on reducing or freezing output.

<u>Whether or not the agreement is aimed at compensating situations of excess supply is wholly irrelevant.</u>

Undertakings are furthermore strictly prohibited from agreeing with competitors to discriminate against any specific customer or supplier by imposing unfavourable terms and conditions of contract or agreeing to refuse to enter into supply or distribution agreements with any specific entity (boycotting).

Allocating Suppliers, Customers, Territories, or Bids Partitioning markets creates a serious restriction of competition and is therefore strictly prohibited under antitrust laws.

The law **<u>strictly prohibits discussing and agreeing with competitors on partitioning of</u>**:

a) territories and/or activities;

b) types of merchandise to produce or sell;

c) suppliers (e.g., non-aggression pacts);

d) customers or groups of customers;

e) tendering procedures.

4.2 Exchanging Sensitive Information Between Competitors

The exchanging of sensitive information between competitors is a very delicate issue in EU and Italian antitrust law. If, on one hand, it is possible for an exchange of information to replace, or even embody the perfect "accomplice" of a cartel in the strict sense (meaning a secret anticompetitive agreement), on the other hand it is undeniable that transparent information may also lead to market efficiency. After all, many of the markets characterised by healthy and lively competition have in place systems, mechanisms and/or structures that promote a certain degree of free-flow of information.

Antitrust law deals with the exchanging of a very specific type of information, and namely information that is considered "*sensitive*" from a competition standpoint. This includes all the information that may expose the strategies of a market operator. This exchange of information is thus what the Antitrust focuses on.

In order to discern whether a piece of information is sensitive in nature, it may be sufficient to ask the question: *would I want my competitor to know this?* Intuitively, the answer will be negative when the information at issue pertains to the Group individually, its current and/or future strategies and, in general, all the information considered confidential or sensitive from a commercial standpoint.

In general, though such an assessment depends on the context and characteristics of the market at issue (for instance, in oligopolistic markets exchanges of information between competitors are more serious than in markets with different characteristics), the type of information regarded as sensitive concern:

- **strategies and other business decisions**;
- **prices, discounts, promotions, economic conditions;**
- **sales volumes;**
- **costs;**
- **profit margins;**
- **business plans;**
- **terms and conditions of sale;**

- when taking part in tendering procedures: **economic and technical bids, lots for which the Company intends to submit a bid,** etc.; and
- any other confidential information that has **commercial/strategic relevance.**

However, information that is not, or is no longer, confidential, is generally not considered sensitive, and namely information that is:

- **aggregate** by geographical and product areas that are sufficiently broad to prevent the identification (including indirectly through *reverse engineering*) of the competitors' individual data;
- **historical**, meaning past information that may be used for statistical purposes only and are now devoid of any strategic relevance; or
- already **in the public domain;**

Exchanging sensitive information is prohibited given that the result thereof is the elimination of the normal uncertainties regarding the economic behaviour which the various companies, competing in a given sector, intend to adopt in the market. By so doing, undertakings could in fact engage in coordinated, and thus anti-competitive, practices, including when no specific agreements on said regard are in place.

This does not also mean that *market intelligence* activities, such as monitoring competitors' activities and general market trends would constitute antitrust violations. If the information is gathered independently, without it being the result of concertation or tacit acquiescence by competitors, market intelligence activities fall within the scope of normal activities which undertakings are at liberty to engage in to set up effective and competitive business strategies.

Conversely, of course, when sensitive information on competitors' activities is gathered through an exchange between undertakings, the above exemption does not apply. We should note that such an exchange, which is potentially anticompetitive, may be considered to have taken place including through the assistance of third parties who act as intermediaries (such as trade associations), which gather information to then disclose it between the companies taking part in the exchange.

Example: the Commission imposed a fine on the *advisory firm* AC-Treuhand for providing assistance to the implementation of cartel agreements between companies operating in the market for heat stabilizers. The advisory firm played an essential role for the implementation of the restrictive agreements, by organising a number of meetings (which it attended and in which it actively participated), collecting and supplying to the producers concerned data on sales on the relevant markets, offering to act as a moderator in the event of tensions between those producers and encouraging the latter to find compromises.

On this regard, we must also observe that this prohibition also includes the simple act of receiving particularly sensitive information by a competitor, as it is assumed that the recipient will take such information into consideration when making decisions on its commercial conduct in the market.

With specific reference to **negotiations conducted in view of possible corporate transactions** (acquisitions, establishment of joint ventures, etc.), the exchanging of sensitive information with competing undertakings is allowed on condition that the party receiving such information undertakes to keep such information confidential, and that the exchange is **(i) strictly indispensable for the objective pursued; (ii) limited to genuinely necessary data; and (iii) structured in a manner such as to limit as much as possible the number of people with access to such information.** In such circumstances, the confidentiality agreements typically signed by the parties to regulate the negotiations phase (known as non-disclosure agreements) must then include specific rules concerning information deemed sensitive under antitrust law. For instance, it will be imperative to create *clean teams* to limit the disclosure of sensitive information to parties who are not involved in the company's operative and commercial decisions. The ACO will therefore need to be involved in the review/integration of relations between the parties during commercial negotiations.

More generally, if an employee of Lavazza receives sensitive information concerning competitors, or learns that other employees of the Group may have access to such information, they need to promptly inform the ACO of such circumstances, and the ACO shall adopt the most appropriate measures to reduce the risk that the Group could violate antitrust laws.

4.3 Hub And Spoke Arrangements

In dealings with distributors (and especially with GDO undertakings) **attention needs to be paid to the possible arising of triangulation dynamics aimed at collusion** “*hub & spoke*”) which may fall within the scope of a prohibited agreement under Article 101 TFEU.

The term ***hub & spoke*** refers to the **coordination** of the **commercial policies** of **two** or more **competing undertakings** (*spokes*) **through a third party** (*hub*) who operates at a different level of the production chain, and acts as an intermediary, interacting individually with each competitor. A *hub & spoke* agreement may take the following forms:

- coordination between **two or more distributors** through one upstream supplier;
- coordination between **two or more suppliers** through one downstream supplier;
- **crossed coordination**, meaning coordination between two or more suppliers, who in turn coordinate two or more distributors.

Unlike the traditional types of agreements restricting competition, a *hub & spoke* agreement takes place in the absence of direct contact between the *spokes*, meaning the two competing undertakings, but rather through indirect contacts - typically in the form of a flow of strategic and/or sensitive information - through the *hub* who may act on its own initiative or on the request of one of the two *spokes.*

A *hub & spoke* agreement violates the prohibition under Article 101(1) TFEU when it is likely to result in

- **the fixing** of sale **prices** or minimum prices;
- the **partitioning** of **markets** or clientele;
- **obstruction** of **parallel imports**;
- **exchanging of information on prices** or other commercially sensitive information to the extent that the exchange reduces or eliminates the degree of uncertainty concerning the functioning of the market, allowing the alignment of commercial practices, with a consequent restriction of competition.

In commercial practice, the most widespread types of *hub & spoke* agreements are aimed at **aligning the retail prices** applied by one or more distributors through the intermediation of a common supplier, including through a simple flow of information on current and/or future retail prices enabling the alignment of such prices.

Example: the UK competition authority imposed fines for £ 15 million for a *hub & spoke* agreement involving the sports equipment manufacturer Umbro and some of its product distributors, which was aimed at fixing the retail price of football clubs t-shirts. One of said distributors/resellers, JJB (who enjoyed some bargaining leverage over Umbro), pressured Umbro to convince a competing retailer, Sports Soccer, to raise its prices and stop applying discounts below the recommended retail price. Umbro actually took action to try to convince Sports Soccer to comply, reassuring Sports Soccer that the competing retailers would likewise not lower their prices.

4.4 Cooperation Agreements Between Competitors

Cooperation agreements between competitors - whether actual or potential - may lead to substantial economic benefits, allowing undertakings to share risk, save costs, pool know-how, enhance product quality and variety, and launch innovation faster.

Acknowledging the benefits that are usually connected cooperation agreements between competitors (**known as horizontal cooperation**), the competition authorities have on numerous occasions deemed that horizontal cooperation agreements did not fall within the scope of the prohibition against restrictive agreements under Article 101 (1) TFEU or satisfy all the cumulative conditions for the application of the exemption under Article 101 (3) TFEU.

However, as such agreements involve direct competitors, cooperation agreements can in certain cases negatively affect competition and thus fall within the scope of the prohibition against restrictive agreements. Depending on circumstances, **these agreements may**

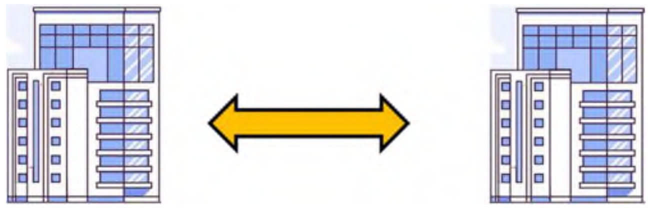
- **facilitate anticompetitive coordination** in downstream markets;
- **strengthen** the **market power** of the parties to the agreement;
- **create obstacles to innovation;**

- **obstruct access** to the **market** (e.g., prevent third parties from accessing standardised technology).

Circumstances must therefore be carefully examined on a case-by-case basis.

Due to the benefits that are usually connected with these agreements, through the years the Commission has adopted category-specific exempting regulations (and relative guidelines) which aim at finding a safe harbour for cooperation agreements that afford more benefits and cause less negative impacts. The regulations currently in place are Regulations (EC) No. 1217/2010 and No. 1218/2010 research and development agreements, and specialisation agreements respectively.

The compatibility of horizontal cooperation agreements with Article 101 TFEU must be assessed in light of the criteria laid down by the European Commission in said block-exemption regulations and in the *Guidelines on the Applicability of Article 101 of the Treaty on the Functioning of the European Union to Horizontal Cooperation Agreements* (Official Journal of the European Union, C 11, 14 January 2011).



In particular,

MAIN HORIZONTAL COOPERATION AGREEMENTS

Joint Research and Development Agreements

Agreements on joint R&D activities for products or processes provide clear benefits on the basis that they promote technical and economic progress.

However, if the parties to the agreement have a significant degree of market power, such an agreement may result in a restriction of competition (e.g., they may constrain innovation, reduce competition between the parties and/or facilitate the parties' anticompetitive coordination including in the ensuing phases of production and commercialisation).

Joint research and development agreements may generally be assumed to be legitimate in terms of antitrust if

- the joint market share held by the parties does not exceed 25%;

- they do not result in a fundamental restriction of competition (e.g., by fixing the product they aim to develop, limiting production or sales, requiring the parties to abstain from further research and development activities)

In the other cases, these agreements must be assessed on a case-by-case basis with the assistance of the ACO.

Joint Production Agreements

The agreements aimed at sharing phases of a productive process normally generate economies of scale or scope, which generally result in lower consumer prices, and can lead to improvements in production technologies.

However, if the parties have a significant degree of market power, the sharing of costs or the exchanging of sensitive information, determined by such agreements, may facilitate a coordination of downstream sale markets (particularly in the sense of an alignment of pricing policies).

Joint production agreements may generally be assumed to be legitimate in terms of antitrust if

- the joint market share held by the parties does not exceed 20%; and
- do not result in a fundamental restriction of competition.

In the other cases, these agreements must be carefully assessed on a case-by-case basis with the assistance of the ACO.

Joint Purchasing Agreements

Joint purchasing agreements (including through joining a purchasing group) strengthen the bargaining power of the parties to the agreement and thus enable to lower procurement costs, which may result in lower prices and benefit customers.

However, if the parties have market power, the sharing of purchasing costs may facilitate the coordination of prices in sale markets; the market power of one purchasing group may be used to exclude competing buyers from the market, limiting their access to efficient suppliers.

Joint purchasing agreements may generally be assumed to be legitimate in terms of antitrust if

- the joint market share held by the parties does not exceed 15% in both the purchasing market and in the sale market; and
- do not result in a fundamental restriction of competition.

In the other cases, these agreements must be assessed on a case-by-case basis with the assistance of the ACO.

Joint Commercialisation Agreements

Cooperation agreements between competitors in the sale, distribution, or promotion of their respective products enable the creation of efficiencies at commercial and/or distribution level, thus reducing their relative costs,
and allowing operators to charge lower prices, benefiting customers.

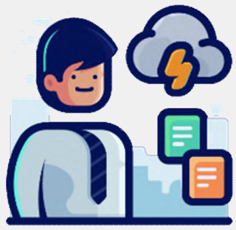
However, especially if they involve concentrated markets and if the parties hold a significant degree of market power, these agreements - without prejudice to the absolute prohibition on fixing joint prices - may increase market transparency and reduce competitive pricing comparison, thus also favouring possible effects of geographic allocation of markets.

Therefore, joint purchasing agreements are generally considered legitimate if

- the joint market share held by the parties does not exceed 15%; and
- they do not result in a fundamental restriction of competition.

In the other cases, these agreements must be assessed on a case-by-case basis with the assistance of the ACO.

Standardisation Agreements



Standardisation agreements favour interoperability between different products/services, the development of new products and improved conditions of supply.

However, these agreements may also prevent third parties from accessing standardised technology, favouring pricing coordination between the companies joining the standard or hindering the development of alternative technologies.

Joint standardisation agreements may generally be assumed to be legitimate in terms of antitrust if

- access to and participation in the standard selection process are open to all competitors;
- the standard-adoption process is transparent (i.e., it provides for the interested undertakings to be properly informed and consulted along the process.
- leave the parties free not to adhere to the standard;
- the interested parties are put in the condition to access the standard under fair, reasonable, and non-discriminatory terms.

In any case, these agreements must be assessed on a case-by-case basis with the assistance of the ACO.

4.5. Relations with Trade Associations

Membership with trade associations clearly does not, *per se*, constitute a conduct in violation of antitrust law. However, the **association context may constitute the means or the occasion to coordinate the practices of member undertakings, with the objective or effect of restricting or distorting competition,** or to exchange sensitive or confidential information with competitors. Some practices adopted within the context of trade associations may therefore fall within the scope of the prohibition of restrictive agreements.

A trade association may

- simply represent an occasion for **implementing cartel agreements** or exchanging sensitive information, without taking any active role (e.g., cartel meetings are held at the end of the Trade Association meetings); or
- have an active role in promoting **uniform market practices for its members** (e.g., establishing uniform terms of offer, distributing circulars with the indications of the prices that need to be applied, etc.).

In the first case, single members meet separately on the occasion of trade association meetings, for the purpose of discussing and/or coordinating prices, market shares, allocating markets or clients, or, in any case, coordinating their market conducts. In these circumstances, the association is extraneous to the restrictive practices and liability falls entirely on the members of the association involved in the violation.

Example: in 2005, the European Commission imposed fines for around 116 million Euro to eight manufacturers and two distributors, for organising a cartel in the polystyrene foam and polypropylene food packaging industry for the retail sector. The Commission's investigation revealed, among others, that the cartel meeting happened near trade sector meetings.

In the second case, the association is an active party in the antitrust violation. This means that the liability of the violation falls both on the association and on its member companies (for instance, when the association's decisions formalise the collusive practices put into place by its members or have the effect of directing or aligning its members' business strategies).

Example: In Case *I722 – Logistica internazionale*, the Italian competition authority (AGCM) fined 19 undertakings and the trade association Fedespedi for engaging in practices aimed at coordinating price increases in the sector of international road freight. According to the AGCM, the agreement had been reached within the Fedespedi association, which had also contributed to the reaching thereof. Fedespedi had in fact been the coordination vehicle between the undertakings involved (calling and hosting their meetings), and, on request by the same undertakings, took an active part in said coordination and curated the means by which it was implemented, sending circular to member undertakings, issuing press releases and publishing ads on national newspapers, for the purpose of facilitating the price increases and informing all the sector undertakings of the decisions taken within the association.

It is therefore absolutely forbidden for trade associations to set up initiatives which, by object or effect, result in a restriction of competition between the associated undertakings. On this regard, an initiative is deemed to be anti-competitive when it:

- alters the **independent setting** of prices and other conditions of sale for the products or services provided by the associated undertakings (such as basic price, overcharges, discounts, promotional activities, etc.);
- **limit output**, with respect to the quantity or type of relevant products, or the research and development activities of associated undertakings;
- facilitate the **allocation** of customers or sale territories between the associated undertakings;
- alter the **independent establishment** of the terms of contract applied by member undertakings to certain suppliers/clients or even just alter the opportunity to engage in business dealings with certain suppliers/clients.

However, under antitrust laws the following activities are generally held to be lawful:

- collecting and publishing **historical and/or aggregate information**;
- conduct **market surveys**;
- engaging in **lobbying** activities;
- establishing **codes of conduct**;
- organising **training activities** for the members of the trade association.

4.6 Leniency Programmes

In order to facilitate the identification of collusive practices (typically known as *secret cartels*), as traditional investigation methods often prove insufficient, the Commission and the AGCM have introduced schemes known as ***leniency programs***. These programmes either offer full immunity from the penalty or a (significant) reduction thereof to companies who decide to collaborate with the competent authorities, acknowledging their participation in an anticompetitive agreement, providing evidence, and collaborating in investigative procedures.

An essential element for obtaining the above leniency is **timing**. Only the undertaking that first acknowledges the existence of the illegal conduct benefits from **full immunity** from penalties. The undertakings that file for leniency at a later time obtain only a reduction of the penalty (increasingly lower in descending order) - but do not receive full immunity - if they provide evidence with ***significant added value*** with respect to the evidence already provided by the first company that acknowledged the breach, or with respect to the evidence in the hands of the competent authority.

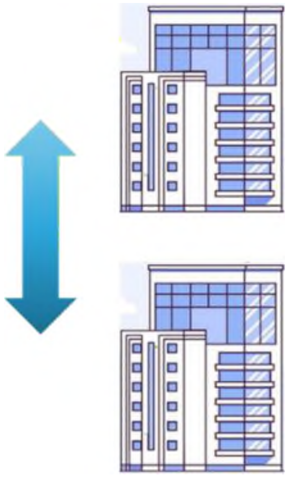
Example: recently, the European Commission granted a company operating in the maritime car shipping sector full immunity from a fine that would otherwise have been levied (around 200 million Euro) for revealing the existence of a cartel aimed at aligning prices, allocating clientele, and exchanging sensitive information (the other companies involved were fined for around 400 million Euro).

In order to take advantage of the immunity or reduction of the penalty, companies must also comply with a general obligation of cooperation with the competent authority for the entire duration of the investigation phase. Said cooperation essentially consists in the following: (i) immediately bring the participation in the agreement to an **end; (ii)** avoid **destroying, altering, or concealing** any information/document being relevant to the authority's investigation activity; and (iii) avoid **informing** anyone of such collaboration with the authorities.

Based on the above, whenever there is a suspicion that Lavazza's employees are involved in an anticompetitive agreement, it is imperative to immediately inform the ACO so that they may assess the situation and make the necessary decisions (which may also simply consist in asking for the immediate involvement of the External Legal Advisers).

4.7 Vertical Agreements

As mentioned, **vertical agreements** are agreements **entered into between undertakings at different levels** of the **commercial** and production **chain.** They concern the terms under which the parties to an agreement may purchase, sell, or resell the products stated in the agreement.



The following are vertical agreements:

- distribution agreements;
- agreements between producers of raw materials and manufacturers of goods derived from said materials;
- agreements between manufacturers and wholesalers;
- agreements between wholesalers and retailers.

Competition law is more lenient on vertical agreements as compared to horizontal agreements, as the former, contrary to the latter, can pursue entirely legitimate purposes and have pro-competitive effects. For example, vertical agreements can generate production or distribution efficiency (thus improving the quality of services), reduce costs, curb free-riding problems between distributors of the same product, etc.

However, even **vertical agreements may result in effects that restrict competition**. The most common (though regarded as less serious) restrictive effect is the **restriction of intra-brand competition**, meaning competition amongst distributors of the same branded products. In some cases, a vertical agreement may also (indirectly) generate a reduction of inter-brand competition, meaning the competition amongst different manufacturers.

Even in the presence of clauses that restrict competition, the pro-competitive effects and the efficiency generated by a vertical agreement may justify the application of the exception to the prohibition of restrictive agreements under Article 101 (3) TFEU when said clauses are necessary to generate said pro-competitive effects and meet the other requirements laid out for the exception to apply.

Where they do not meet the conditions for the application of the exception, the clauses that determine a restriction of competition fall within the scope of agreements restricting competition, and are therefore invalid. If they are essential to the agreement, they may render the whole agreement invalid. The invalidity of the clause precludes the arising of any legal effect, with the consequence that the parties cannot demand enforcement of the clause (or the entire agreement where the clause is essential and is not separable from the remainder of the agreement).

The assessment of a vertical agreement's restrictive effects on competition must **take into account the factors connected to the structure of the market interested** by the agreement and the position which the undertakings, parties to said agreement, have in their respective markets. It is more likely for anticompetitive effects to arise when competition at one or more levels of the commercial chain is found to be insufficient, and at least one of the parties to the vertical agreement holds a significant degree of market power.

The Commission has moreover recently renewed its interest for vertical agreements, particularly with respect to the distribution of products and the provision of services on-line.

In Regulation (EU) No. 330/2010 on block exemptions on vertical agreements (the "Regulation"), the European Commission laid down the criteria which, when satisfied, allow to assume that a vertical agreement is legitimate based on the prerequisite that it meets in any case the conditions for exemption to the prohibition of restrictive agreements (known as *safe harbour*):

- both the **market share held by the supplier and by the distributor do not exceed 30%** of the relevant markets (the market on which the supplier sells the contract goods and on which the distributors resells said goods); and
- **the agreement does not contain clauses that severely restrict competition** (known as *hardcore* restrictions, such as the imposition of fixed or minimum retail prices or the prohibition of passive sales, see below).

Even where a vertical agreement meets the above criteria, some clauses (such as non-competition or exclusivity obligations exceeding a certain duration) may not be covered by this block exemption under the Regulation and might thus require to be assessed individually.

Even in the cases when the market share threshold is exceeded and the agreement falls outside the scope of the automatic block exemption under the Regulation, a potentially restrictive vertical agreement may still benefit from an individual exemption under Article 101 (3) TFEU, as long as it does not contain any hardcore restrictions. In this case, undertakings need to carry out their own self-assessment to see if the agreement meets the four cumulative conditions under Article 101 (3) TFEU, and bear the burden of providing evidence that their self-assessment is correct, in case of possible inquiries.

The ACO must in any case be consulted to assess if the conditions for exemption, whether block or individual, are in place

Hardcore restrictions. As mentioned, vertical agreements may contain restrictions which severely affect competition. When these clauses are present, the agreement cannot benefit from a block exemption (irrespective of the market share held by the parties) and it is presumed to fall within the scope of restrictive agreement and that it is wholly unlikely to benefit from an individual exemption under Article 101 (3) TFEU. A clause containing **a hardcore restriction is automatically invalid** and its presence in a vertical agreement may a competition authority to launch an investigation, which may even result in the imposition of fines.

These are typical examples of hardcore restrictions:

- **resale price maintenance** (or RPM), meaning clauses having as their direct or indirect object the establishment of a fixed or minimum resale price or price level; and
- **exclusive division of the market by territories or groups of clients** (such as territorial exclusivity clauses with prohibition of passive sales outside the territory).

RPM. A supplier cannot, therefore, impose its distributors any fixed or minimum resale prices for the contract goods, whether in writing (including via e-mail, messages, or any other form of correspondence) or orally.

The prohibition applies even if the imposition is indirect. Some typical ways for carrying out an **indirect imposition of resale prices** are:

a) the **granting** of **bonuses, rebates,** or **repayments** of **promotional expenses** conditional on the distributor's observance of recommended price levels;

b) **the imposition** of **penalties** to **distributors** who do not abide by recommended prices or threats or intimidation, penalties, delays or suspension of deliveries, contract terminations in relation to observance of a given price level;

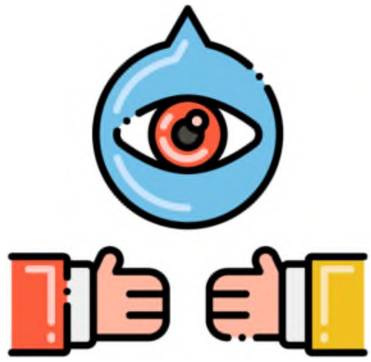
c) the **fixing** of the **distributor**'s **margins** or maximum level of discounts which distributors may grant their clients;

d) the **fixing** of **formulas** to **calculate resale prices**.

A supplier may, on the other hand, legitimately agree with distributors on maximum or recommended resale prices, as long as these are not equivalent to fixed or minimum prices.

An RPM may benefit from an exemption to the prohibition of restrictive agreements under Article 101 (3) TFEU only in case of very exceptional circumstances, where such agreements may give rise to increased efficiency. An example is the case of short-term promotional campaigns (2-6 weeks) which also benefit consumers - which implies that the resale price is fixed at a lower level to pre-campaign price, or in the launching phase of a new product, where a fixed resale price may give distributors the means to increase promotional efforts and thus ensure that the launch of the new product is successful, including to the benefit of consumers.

Exclusive Territorial and Customer Restrictions



In general terms, clauses under which a supplier imposes to a distributor the obligation to resell contract goods exclusively within certain geographical areas or to certain clients, prohibiting distributors to sell to clients located in areas other than the territory in which the distributor operates, are regarded as restrictive of competition. This is because such restrictions typically result in a reduction of legitimate intra-brand competition, meaning competition between distributors of the same branded products.

The qualification of **restrictive** applies not only to obligations aimed at such restriction, but also to **indirect measures such as refusal or reduction of bonuses and discounts, termination** of **supply** or **reduction of supplied volumes** to the demand in the territory or customer group.

Within the scope of an exclusive distribution system, suppliers are however allowed to prohibit distributors from making *active sales* within the territory or to a group of clients which are exclusively allocated to a different distributor or reserved to the supplier. The term active sales mean sales closed by actively approaching a specific customers or groups of customers or within a specific territory assigned to a different distributor (such as via phone calls, unsolicited e-mails, promotions or targeted advertisement in the media, or, in the case of exclusive territories, by opening sales outlets). The prohibition of active sales within the scope of an exclusive distribution system is in fact aimed at protecting the investment, typically made by the exclusive distributor to the benefit of customers (e.g., promotional activities, pre- and post- sale customer assistance) from free-riding phenomena.

Passive sales are on the other hand always allowed; in other words, distributors cannot be prevented from responding to unsolicited requests made by customers assigned to or located in a territory allocated to a different distributor. General advertising or promotion that reaches customers in other distributors' exclusive territories or customer groups, but which is a reasonable way to reach customers outside those territories or customer groups – such as reaching customers in one's own territory, are considered passive selling. Generally speaking, therefore, the existence of a distributor’s website is considered a form of passive selling. If a customer located in the exclusive territory of a specific distributor visits the website of a different distributor and contacts the latter, and if such contact is concluded with a sale, this is considered a passive sale, which cannot be restricted.

Prohibition Against Abuse of Dominant Position

The Prohibition. Article 102 TFEU **prohibits undertakings holding a dominant position to abuse of such position.**

Holding a dominant position in a specific market is, in and of itself, not prohibited. However, the dominant undertaking has a *special responsibility* which entails the obligation to adopt greater caution in determining its commercial strategies. In fact, practices which are wholly legitimate for non-dominant operators may become unlawful when implemented by an undertaking holding a dominant position.

This does not imply that a dominant undertaking cannot protect its commercial interests, but rather that its practices must remain within reasonable limits and not have the objective or effect to decrease the degree of competition in the market (which is already reduced by effect of the presence of a dominant operator) or exploit customers or suppliers.

Relevant Market **In order to assess whether or not an undertaking holds a dominant position, the first step consists in analysing the competitive pressures it is subject to, or in other words defining its *relevant market***, which allows to identify products/services and competing suppliers.

The **relevant market** is the result of the combination of **two dimensions:** (i) the **product** dimension (known as *product-relevant market*) which comprises all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of the products' characteristics, their prices and their intended user; and (ii) the **geographic** dimension (known as *relevant geographic market*) which identifies the area in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas.

The definition of the relevant market - in its two-fold product and geographic dimension - may be complex and it requires sophisticated quantitative and qualitative analytical instruments and tests. A competition authority may identify a different relevant market to that which is intuitively and immediately perceived: for instance, geographical boundaries may be smaller (or larger) to national boundaries, and the product and service categories may be different to those commonly referred to by operators. For this reason, it is important to consult the ACO for this type of analysis.

Dominant position A dominant position is a position of economic strength enjoyed by an undertaking which affords it the power to behave to an appreciable extent independently of its competitors, its customers and ultimately of its consumers, or without taking particular account of their possible reactions (*individual dominant position*).

A dominant position does not entail the absence of all competition from the market, but rather a situation where a dominant undertaking may have an appreciable influence on the conditions under which competition will develop, and in any case to act largely in disregard of the reactions of competitors and markets when defining its market strategies.

The existence of a dominant position in a relevant market must be assessed on a case-by-case basis, taking into consideration numerous factors.

A starting point for this analysis is the market share held by an undertaking:

- a market share **exceeding 50%,** remaining stable over time, raise a presumption of dominance;
- a market share **between 40% and 50%** is a significant indicator which, jointly with other factors, may lead to a determination of dominance;
- a market share **between 30% and 40%** is normally insufficient, but there may still be dominance when other decisive factors are also at play (e.g.. vertical integration, control over non-duplicable facilities, availability of essential patents, etc.), which give an undertaking significant competitive advantage;
- save in exceptional cases, a market share **below 30%** excludes dominance.

Other **relevant factors** are (i) the **market shares of competitors**, which give an indication of competitive pressure; (ii) **the existence** of **unused production capacity**; (iii) **barriers to** market **entry** (e.g., authorisation schemes, economies of scale, *switching costs* for customers); (iv) the **purchasing power** of **customers**; (v) **characteristics** of the **market** (e.g., rate of innovation).

In exceptional circumstance, several undertakings may jointly hold a *collective dominant position*. This happens when two or more undertakings - which are legally and economically independent and not acting in accord - are led by (contractual, structural, or economic) constraints and by the structure of the market to adopt a common line of action on the market, appearing, to competitors and customers alike, to be one single dominant entity.

In order to find evidence of the existence of a collective dominant position, three conditions must be satisfied:

- a **high degree** of **transparency** in the **market** – each oligopolist has the ability of monitoring the market practices of the others (e.g., whether they apply lower prices);
- **the existence** of **incentives** to **cooperate** – an effective retaliation system or the possibility of triggering a price war; and
- the **absence** of **outside interferences** capable of undermining the results of the coordination (known as tacit coordination), such as the reaction of competitors not taking part in the coordinate practice or of customers.

Each collectively dominant undertaking may abuse their joint power through individual practices.

Abuse of Dominant Position European (and homologous national) competition regulations do not provide a definition of abuse, but merely provide a list of examples of abusive practices. The notion of abuse of dominant position is therefore atypical, and it includes any practice that is objectively likely to negatively affect competition, hindering competitors or exploiting commercial counterparts.

The abuse has an *objective* nature. The intent of the dominant undertaking is irrelevant.

Abusive practices may be classified as:

- **exclusionary abuses**, meaning practices that obstruct competitors, indirectly harming customers/consumers, consisting in excluding or marginalising existing competitors or obstructing the entry of new competitors in the market; and
- **exploitative abuses**, meaning practices which harm customers directly, aimed at extracting supra-competitive profits, typically by the imposition of excessive or discriminatory prices.

This abuse may take place or produce effects even in **markets other than the dominated market**. For example,

- a dominant undertaking in market A charges predatory prices in market B - a non-dominated, but neighbouring market - where a competitor is already active, in order to dissuade the latter from entering market A;

- the only producer of an essential *input* suspends, without justification, its supply to a customer with whom the producer competes in a downstream (non-dominated) market in order to exclude the customer from said market.

Some of the main types of practices which may, according to the specific circumstances of the case, fall within the scope of abuse of dominant position, are briefly described below. This is a non-exhaustive list.

5.1 Main Exclusionary Abuses

Unjustified refusal to deal Even dominant undertakings are in principle free to decide with whom they may enter into commercial relationships, but in some cases this may constitute an abuse of dominant position:

- **terminate an existing supply relationship** with a customer without an objective justification;
- unjustified **refusal** to supply **an indispensable input** – or deny access to an **essential facilities** – in order to compete in one or more downstream markets. Imposing unfair or excessively onerous terms and conditions may amount to a refusal.

In order for a refusal to deal to be qualified as abusive, the following circumstances must be in place:

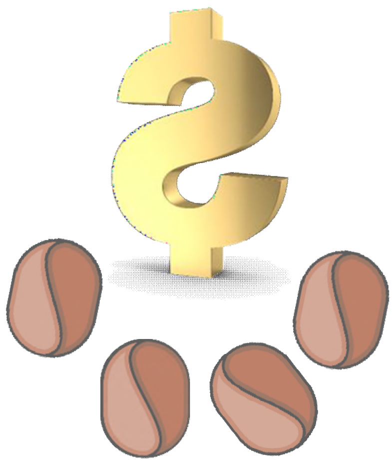
- the *input* or infrastructure requested **are indispensable in order to effectively compete** in one or more of the downstream markets in the sense that not only there must be no other sources of supply, but the facility or input must also be non-duplicable by the undertakings competing in the downstream market (including through a collective effort);
- the refusal **eliminates effective competition** in the downstream market;
- the refusal has no **objective justifications**, such as reasons having a technical (e.g., capacity saturation), contractual (e.g., breach of contract, default of the applicant) or other nature (e.g., financial unreliability of the applicant).

In some cases, it has been found that **the refusal by a dominant undertaking to meet in full the orders submitted by an existing customer**
may constitute abuse where:

- a **partial refusal** to provide a supply is aimed at preventing or limiting the parallel exporting of the goods at issue to other EU member States, thus leading to a restriction of competition in the distribution of such products in the markets of the export member States;

- the **customer's orders present no anomalies**, meaning that they are not excessively large.

Predatory Prices Predatory prices are **sale prices below the average avoidable costs**[2] (known as “selling at a loss”), charged by a dominant undertaking as part of a long-term commercial strategy. As it entails, by definition, a financial sacrifice, this practice is abusive as it is presumed to be aimed at eliminating competitors who, not enjoying the same economic power as the dominant undertaking, are unable of matching such prices and will therefore be forced out of the market. The underlying idea is that, once competitors are eliminated, a dominant undertaking may then raise its prices to a supra-competitive level and recover its margins.



If prices exceed average avoidable costs, but are below total average costs, they are predatory only when there is proof that the practice is part of a wider exclusionary strategy. Such prices may in fact be legitimately justified, for reasons other than exclusionary purposes, at least in the short term.

To verify whether or not a practice qualifies as predatory pricing, is to check whether or not an offer is **replicable** by as-efficient competitors. Prices above the long-run average incremental cost[3] borne by a dominant undertaking (identified as proxy of an as-efficient competitor) are regarded as replicable and thus generally not predatory.

Example: in case COMP/38.233, the Commission fined a subsidiary of France Telecom for having abused its dominant position in the Internet access services market for residential customers. The Commission found that Wanadoo Interactive charged below-cost prices for ADSL services, as part of a plan to pre-empt the market for high-speed Internet access during a significant phase of the market’s growth. The charging of below-cost (“predatory”) prices was found to have no economic justification given that, in the first period, Wanadoo did not recover its variable costs through the prices offered, and, in the following period, Wanadoo's prices were found to be equivalent to its variable costs, but far below full costs. On this regard, the General EU Court, in response to France Telecom’s argument on the need to reduce prices to compete more effectively, observed that undertakings in dominant positions are not automatically afforded the right to align their prices to those of competitors’ when this entail the application of below-cost prices.

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2 The Average Avoidable Cost considers the average costs that could have been avoided if the undertaking had produced a given quantity of added output (which is presumed to be the object of the predatory practice). In most cases, the AAC and the average variable cost coincide, given that in most cases the only costs that can be avoided are the variable costs.

3 The Long-Run Average Incremental Cost considers the average of all the costs (fixed and variable) which an undertaking bears to manufacture a given product

Tying or Bundling Through these practices, a product is only sold when tied to a different and separate product, or is sold under better conditions as a bundle as opposed to the separate purchase of the two products.

Tied or bundles sales are very common: they may reduce production/distribution costs or give rise to other types of efficiency. However, when carried out by a dominant undertaking, they may be abusive.

Through such practices, an dominant undertaking in the primary product market may attack the non-dominated market of the tied or bundled product (a strategy known as leverage) or indirectly protect its dominance in the other market.

Though widespread and capable of generating various types of efficiencies, when implemented by a dominant undertaking tied or bundled sales may fall within the scope of prohibited abuse of dominant position. This is because, through such practices, a dominant company in the primary product market may attack the non-dominated market of the tied or bundled product *leverage*) or indirectly protect its dominance in the other market, generating a negative impact on the economies of scale and the profits of current or potential competitors, hindering their ability to remain in the market.

For a **tying** or **bundling** practice to be considered abusive, it is necessary for such practice to be

- engaged in by a dominant company in the primary product market (tying);
- the primary product and the tied/bundled product are two actually distinct products;
- there is a form of coercion, pressure, or in any case an incentive to buy the two tied or bundled products; and
- the practice results in reducing competition in the tied/bundled product market.

Tied or bundled sales are lawful when a competitor (including hypothetical) that is as efficient as the dominant company can profitably compete with such sales, offering even just one of the products, or, if it is the case, similar products. This test requires assessments of the dominant undertaking's business costs and whether or not they can be replicated.

Example: in case COMP/37792, the Commission fined Microsoft's practice of incorporating the Windows Media Player (WMP) programme (software capable of reproducing digital audio and video content to PCs) within the Windows system, thus giving rise to a *tying* policy. The Commission held that all the requirements established by case law to give rise to the abusive practice of tying, and namely (i) the company holds a dominant position in the "tying" product market (in this case, the Windows operating system); (ii) the "tying" and the "tied" product (WMP) are two distinct products;

(iii) the undertaking leaves no choice to its customers other than purchasing the two products together, and (iv) the *tying* practice has the effect of restricting competition in the market of the "tied" product.

Loyalty Rebates and Practices Rebates stimulate demand and afford actual benefits to consumers. However, in some circumstances rebates that are conditional on a specific form of purchasing behaviour, afforded by undertakings in a dominant position may have the effect to exclude competitors.

A dominant undertaking is considered to engage in abusive and thus **prohibited** practices when it grants

- conditional rebates relying on the buyer's commitment to **exclusively** purchase **over 80% of its total needs** from the dominant undertaking;
- conditional rebates relying on **purchasing volume targets** matching all or almost all of the customer's total needs.

More generally, the practice of granting **loyalty rebates**, which cannot be replicated by alternative suppliers, thus making purchasing from said suppliers uneconomic, constitutes an abuse of dominant position.

Loyalty rebates may take a variety of forms and combinations. In general, within a system of rebates connected to reaching certain given sale targets (e.g., certain thresholds within a given period of time), the loyalty effect is enhanced for rebates which

- are **disproportionate**, meaning that they increase disproportionately in the top tiers;
- are **retroactive**, where the rebate is applied to all the units sold, from the very first onward, after certain thresholds are met;
- accrue over **very extended periods of time** (according to the context and the frequency of transactions in the market, periods extending to one year may be considered excessive);
- are granted on an **individual basis**, meaning that the purchasing thresholds linked the application of a rebate vary from customer to customer.

For example, **retroactive and individual** rebates constitute the type of rebate which, after the above-mentioned exclusive rebates, is traditionally considered to be most likely to determine anticompetitive foreclosure with respect to competitors due to its loyalty-building effect. In fact, against with this type of rebates, in order to persuade a buyer to shift a portion of its purchases from the dominant undertaking to the competitor's, this latter must keep into account the absolute value of the rebate granted by the dominant undertaking in case of attainment of the thresholds, and set its rebates to a higher rate of discount, in relative terms, as compared to the lower volume purchased from the competitor. This, according to the circumstances, may prove difficult, if not unattainable, and thus generate the above loyalty-building (and thus preclusive) effect. Clearly, the longer the period of reference by which the buyer must reach the set thresholds to benefit from the rebates, the stronger the loyalty-building effect at issue, and the larger the market share of the dominant undertaking.

The Commission proposed a more economically geared approach for assessing the rebates granted by a dominant position, which aims to assess (i) the actual price level (net of achievable rebates) charged by the dominant undertaking to the customer for the share of sales a competitor intends to attack; and (ii) whether such price lower or higher to the prices charged by an as-efficient competitor (assuming they are the same as those charged by the dominant undertaking). In practical terms, the calculations required to apply the Commission's test can be extremely complex and require access to information that is not always available.

A system of **quantity-based rebates**, connected to the reaching of various purchasing targets and **aimed at passing on to customers cost savings in terms of efficiency** attained by supplying larger sales volumes, is considered **legal**.

More generally, it is more unlikely for a rebate scheme to be abusive if rebates are (i) **incremental** (meaning applicable only to units purchased above a threshold) (ii) benchmarked over a relatively short reference period (in any case not exceeding one year), (iii) based on proportional rebate levels and applied to relatively close benchmarks, so as not to create excessive competitive disadvantage for a customer who is unable to reach the target threshold, and (iv) sufficient to always determine an actual price above the cost of the units sold.

Example: in case COMP/37.990– Intel, the Commission fined Intel for over 1 billion Euro for engaging in abusive practices aimed at excluding or marginalising its main competitor in the market for a specific type of computer microchip. The Commission found fault, among others, in the fact that Intel granted to the main manufacturers of original devices certain retroactive rebates, conditional on purchasing all or most of their requirements of a product exclusively from the dominant undertaking. The Commission found that the price which an as-efficient competitor should have charged for its processors to compensate the buyer for the loss of incentives granted by Intel was below the average avoidable cost, thus resulting in an exclusionary effect. The European Court of Justice confirmed the decision of the Commission, deeming such discounts to be de fact equivalent to exclusionary rebates.

Margin or Price Squeeze A strategy by which a (dominant) supplier of an indispensable input for competing in a downstream market, where the supplier also operates, obstructs its competitors in the downstream market by raising the input's price and lowering the price for the derived product/service, to such an extent that it prevents competitors who purchase the input to have any profit margin in the downstream market.

In order to determine whether an abusive *margin/price squeeze* is in place, we must check if the actual price charged by the dominant undertaking to its customers in the downstream market is below or above the sum (i) **of the price paid by competitors to purchase the product upstream** and (ii) the **long-run average incremental cost which the dominant undertaking bears to produce and commercialise the derived product**. If the price is higher, then the practice will not be qualified as abusive because an as-efficient competitor will be capable of replicating it, and thus effectively compete in the downstream market with the dominant undertaking, in spite of purchasing the input from the latter.

Example: in Cases COMP/C-1/37.451, 37.578, 37.579 – *Deutsche Telekom*, the Commission qualified as abusive the conduct held by Deutsche Telekom, which formerly had monopoly in the retail provision of fixed-line telecommunications services in Germany, for having engaged in a series of exclusionary practices harming competing undertakings in the supply of fixed-line telecommunication services (both broadband and narrowband). The abuse came about when Deutsche Telekom charged its competitors more to what it charged end-users for last-mile connection to the public fixed-line telecommunication network (essential facility), thus resulting in a price squeeze.

Abuse of Rights Dominant undertakings must pay attention to practices which, though legal in principle, and even representing the exercise of a right, are nonetheless likely to exclude competitors.

Practices at risk include conducts aimed at delaying or obstructing the access of competitors to the market, by instrumentally exercising intellectual property rights linked to the ownership of industrial property rights, or the possibilities offered by legal protection (a strategy known as *sham litigation*) or administrative regulations.

Example: in case A437 – *Esselunga/Coop Estense,* the Italian competition authority fined Coop Estense for a series of abuses aimed at obstructing (or significantly slowing down) the entry and expansion of its competitor Esselunga in the province of Modena, by interfering with the authorisation processes launched by Esselunga to obtain the required authorisations.

Additional Exclusionary Abuse Practices Some additional exclusionary abuse practices include:

- ***win-back*** and/or ***retention*** strategies by which a dominant undertaking exploits specific competitive advantages (privileged information assets, abuse of contractual procedures) in order to (i) systematically recover customers who switched to different suppliers, contacting them to grant special offers or better deals, exclusively reserved to returning customers (*win-back*); or (ii) keep customers from switching to different competitors. It is best to promote non-individual offers or win-back-exclusive offers and discounts that reflect actual cost savings.

- The **exploiting of privileged information** which occurs when a dominant undertaking uses to its advantage , in markets open to competition, privileged information, meaning data acquired in the performance of an activity carried out under exclusive terms or in providing public interest services, in order to strengthen its position in such markets.

5.2 Main Exploitative Abuses

Excessive Pricing In normal conditions, keeping prices high attracts competitors to the market, and the competition that arises from the arrival of competitors tends to make such prices fall. In special cases, however, when this self-corrective mechanism cannot be triggered (e.g.., due to regulatory or economic barriers to market access), the application of excessive pricing policies (meaning prices not based on costs and disproportionately higher to the economic value of the product or service offered) or other unfair trading conditions implemented by a dominant undertaking may fall within the scope of a prohibited abuse.

Price Discrimination Discriminating a customer in respect of another, by applying different pricing policies for the same product/service, when both customers generate similar supply and logistic cost efficiencies, may constitute abuse.

Price discrimination practices implemented by a dominant undertaking may be abusive if

- ***it prevents access to the market*** *and the growth of competitors*, making it harder for them to contract with certain customers/suppliers; or
- ***creates an unbalance between undertakings*** *who compete with each other* on a downstream market.

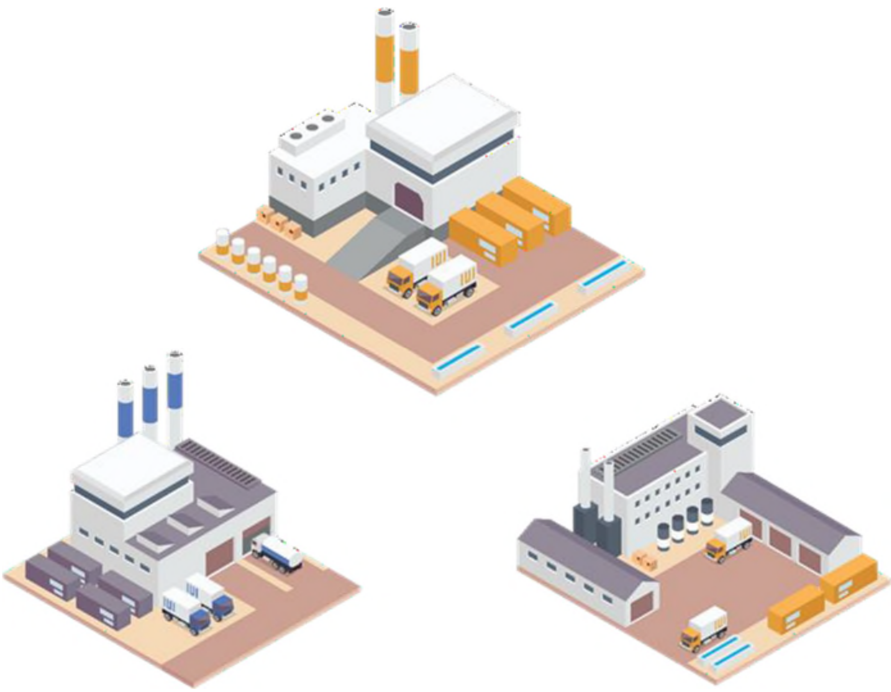
A specific case of price discrimination occurs when a dominant undertaking charges a customer higher prices to those it charges its own subsidiary companies or internal units who operate in the same downstream market.

Applying significantly different prices in different States, where such practice has the object or effect of isolating national markets, and is aimed at obtaining excess returns, can also be qualified as abusive.

III PRACTICAL GUIDELINES

6.1. Dealings with Competitors

The ***policy*** adopted by **Lavazza** on dealings with competitors lays down **clear** and **imperative** rules: (i) **no information deemed sensitive under antitrust law may be exchanged with competitors**; and, irrespective of context, (ii) **no agreement**
– - whether formal or informal – **which may affect, by restricting it, the Group's independent commercial strategy may be *closed* with competitors** (without prejudice, of course, to the cases expressly allowed in this Antitrust Handbook).



Lavazza must pay close attention to the fundamental principles of antitrust law *whenever* it enters into an agreement with competitors. Anticompetitive agreements, in fact, do not require being set out in writing, as they may be entered into including orally or informally. Any *form of contact,* irrespective of the context in which it occurs or its frequency (a meal out, a chance encounter in an airport, a social event, a trade fair), which may give rise to effects capable of affecting the behaviour of a competitor on the market, is a potential risk.

It is strictly prohibited to discuss, or exchange any information dealing with the following topics with competitors:

- **prices and other terms and conditions of sale** (such as discounts, promotions, concessional economic conditions);
- **costs** regarding production and in general any costs borne by Lavazza;
- profit **margins**;

- purchasing prices and other **terms and conditions of purchase** agreed with suppliers;
- sale **volumes and strategies**;
- Lavazza's **customers** and **suppliers**;
- the **allocation** of markets in terms of product/service, customers, or geographical areas;
- the **refusal** to supply a specific customer or buy from a specific supplier;
- new products or investments the Company intends to pursue **in the future**; and
- the taking part in a public or private **tendering procedure** .

Should a competitor engage in a conversation dealing with the above topics, employees must categorically refuse to continue in the conversation and immediately alert the ACO.

Due to the fact that dealings that are per se be completely legitimate may degenerate in anticompetitive conducts (or may be deemed such by the competent antitrust authorities), employees must: (i) **limit dealings with competitors to *what is strictly necessary***; and (ii) **restrict exchanges to unequivocally legitimate topics** (such as a new piece of legislation about to be adopted and of common interest to both parties).

This being said, undoubtedly Lavazza may at times gain knowledge, in the performance of their legitimate activities and commercial initiatives, of sensitive information concerning its competitors through third parties (such as customers, suppliers, public documents, etc.). This type of information is at the heart of *market intelligence* and obtaining such information is not a violation of antitrust law as long as the involvement of the above third parties is not used to cover an effective exchange of information between competitors (see § (4.2)).

Should Lavazza gain commercially sensitive information concerning one or more competitors in a lawful manner (such as through a customer or by examining public sources), **it is nonetheless opportune to take note of the date in which said information/document is obtained and the source thereof, so as to be able to justify the Company's possession thereof.**

We must stress that **no information on prices may be exchanged with competitors** even if such information is actually *public*. An antitrust authority, in fact, may interpret such exchange as an attempt to facilitate a coordinated alignment of prices.

Example: an emblematic case was the investigation launched by the Italian competition authority into a number of motorway fuel distributors. According to the AGCM, press announcements of price variations recommended to the public by oil companies, published on specialised press, were functional to creating collusive parallelism.

Particular attention is required in cases where Lavazza operates as reseller of competing products (this applies to *Lavazza Professionali*, which, through its automatic vending machines, distributes in various countries both Lavazza's own and competitors' products). In this situation, it is necessary to make sure that the reselling/distribution does not open to an exchange of competitively sensitive information between Lavazza (in its capacity as supplier) and its competitors, or even to a "unilateral" flow of sensitive information from competitors to Lavazza.

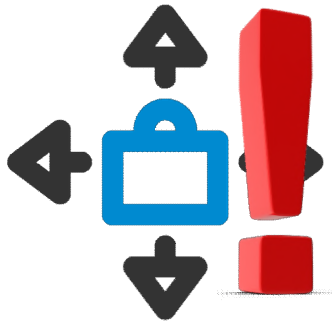
To this end, it is **opportune** to ensure, on one hand, that **the information provided by competitors to the Group's company dealing with the distribution/resale is limited** to that being strictly necessary to the performance of the distribution/sale agreement for the products at issue, and, on the other, that **such information is not in any case further disclosed within the Group**, unless there is a cogent or objective necessity to do so and the information is disclosed in a manner such as to not leave trace of individual data of single competitors.

More generally, any time an employee of Lavazza should receive sensitive information regarding competitors, they must promptly alert the ACO, including for the purpose of defining the manners in which the sender should immediately be informed that there is no interest to receiving such information, which must then be immediately deleted and not taken into account.

Likewise, if an employee of Lavazza should be aware of circumstances indicating that other employees of the Group may have had access to sensitive information regarding competitors - which may happen, for instance, when hiring new members of staff who were previously employed with competing undertakings - they must consult the ACO, who shall evaluate taking the most appropriate actions to prevent the disclosure of such information within the Group.

Lastly, we should note that **any cooperation agreements with competitors may, even when lawful in principle, potentially give rise to anticompetitive effects**. For this reason, said agreements must always be submitted to the prior scrutiny of the ACO, who will assess whether they entail a violation of antitrust law, including with the assistance of the External Legal Advisers.

6.2 Hub And Spoke Arrangement Risks



As explained (see § 4.3 above), in dealings with distributors (particularly with GDO undertakings), the **employees of the Group must avoid any conduct which may give rise to the risk of becoming involved in events that may be deemed symptomatic of the existence of a *hub & spoke* agreement.** To this end, employees must **abstain from**

- **sharing** commercially sensitive **information** concerning one or more distributors with other distributors, or reassuring distributors as to the other distributors' alignment with price policies;
- **becoming involved** to **convince** one or more **distributors** to **align** their prices with the **prices** charged by others, including when pressured by the latter to do so;
- **using**, in drafting **any** type of **corporate document**, **language** which may be **erroneously suggest** having **any role in hypothetical resale price coordination** practices between competing distributors.

In any case, in case of doubt, all employees of Lavazza are required to consult the ACO.

6.3 Membership in Trade Associations

As explained above (see § 4.5), t**aking part in activities organised by a trade association** of which Lavazza is a member, including when fully lawful, **may pose risks in terms of antitrust law.**

Membership in a trade association and taking part in the events and meetings organised by the association is entirely legal. In order to avoid situations that may potentially violate antitrust laws, the topics that may be addressed during a meeting organised by a trade association are topics of general interest or are not sensitive in terms of competition, such as:

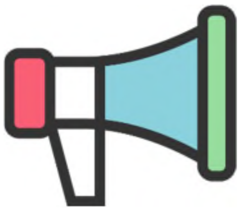
- legislative and regulatory proposals;
- lobbying activities vis a vis the public authorities;
- institutional promotion of the sector;

- technical topics (regulations, standards, etc.);;
- preparation of and participation in trade shows

.

The **gathering and exchanging of sensitive** information concerning, for instance, the **prices** charged by or the costs borne by association members, for purely statistical reasons within the trade association**, is lawful as long as the following precautions are observed**:

- all sensitive information must **always** be disclosed to impartial third parties (meaning the trade association and/or the independent advisers appointed by the association) and **never** directly to competitors;
- the ensuing statistics produced must be exclusively based on "historical" information and made available in aggregate form, so as to refer to the market as a whole and making it impossible to point to single undertakings.



Due to the sensitivity of these topics, we recommend in any case not to join any exchanging of information for statistical purposes before contacting the ACO.

Because, as examined, **trade associations can facilitate improper dealings between competitors**, **we recommend taking the following precautions**:

- ensure that the representatives of Lavazza do not participate in any activities of the trade association if, in the 12 previous months, they did not attend dedicated training session on antitrust issues, organised by the ACO, with the assistance of the External Legal Advisers where needed.
- ensure that an agenda for the meeting at issue is prepared and circulated beforehand, and that the agenda is shared with the ACO. If doubts persist, we recommend not to take part in the meeting;
- keep a written record of the topics discussed during the meeting;
- ensure that all the matters addressed over the course of the meeting are duly recorded in minutes, and where opportune (and possible), ask for the External Legal Advisers to attend the meeting.
- avoid discussing any topics not included in the agenda;
- avoid taking part in possible bilateral or multilateral meetings (where prices, costs, customers or commercial policies are discussed) being held outside the formal meeting;
- abstain from starting or engaging in informal conversations with competitors that may even superficially deal with the above topics;

- when antitrust-sensitive topics are addressed, immediately manifest their dissent, asking for the discussion to stop immediately. If the discussion continues, leave the meeting. Representatives must disassociate themselves from the discussion in *express* terms (recorded in the minutes of the meeting) given that even tacit participation to one (single) exchange of information between competitors may be sufficient to constitute a violation of antitrust laws.

6.4 Dealings With Distributors/Resellers

As mentioned above (§ 4.7), agreements with distributors/resellers of Lavazza products should not contain any obligations to observe a **fixed or minimum retail price**, and should not contain any language granting - as they would risk being considered a prohibited form of indirect RPM - any incentive of any nature aimed at persuading distributors to **not apply prices below the (legitimately) recommended price, where any** (e.g., rebates or bonuses being conditional on the observance of said prices). In the presence of indirect RPM, any use of contract clauses stressing the right of the distributor to fix their own resale prices does not cancel out the illegality of the RPM.

Similarly, whereas it is possible to add to such contracts clauses to prohibit distributors to actively seek the opportunity to sell within a territory or to a group of customers which are exclusively assigned to a different distributor, distributors must always be allowed to **respond to unsolicited orders** made by customers located in the territory or part of the group of customers exclusively assigned to a different distributor. Within the scope of automatic vending machines, a group of customers *exclusively* assigned to a given Lavazza provider is identified as the group of customers at whose premises said provider has installed, under the terms of a free loan, the espresso vending machine.

Lastly, when evaluating the option of terminating a supply agreement in place with a distributor/reseller with whom Lavazza has had a long-term and consolidated relationship - or when evaluating a significant reduction of supplies compared to the past trends - the ACO should be consulted beforehand so that they may assess the possible implications of such termination or reduction in terms of antitrust law.

6.5 Keeping Company Records

The most relevant evidence available to competition authorities, when conducting preliminary investigations on possible antitrust violations, is company records (notes, hardcopy and/or electronic documents, e-mail correspondence) which authorities are typically able to obtain from conducting unannounced inspections to corporate headquarters (for more information on procedure, see
§ 6.6 below).

For this reason, **it is absolutely essential to pay the utmost care in keeping any corporate record, whether they are addressed to a colleague within the Group or to an external third-party**. It is **prohibited** to use

- **sentences** which may be **misunderstood and suggest the existence of improper conducts involving competitors**, customers, and suppliers, using expressions such as "*we'll make them pay for it*" "*we need to coordinate with the market*" "*received from the competition*", etc.;
- **language which may suggest a coordination with competitors**, such as referring to a lost customer as being "*stolen*" by a competitor, to the lower prices charged by a competitor as "*reckless*" or "*inconsiderate*" or to a trade association as the "*club*" and to a competitor as a "*friend*".

Employees are conversely invited to:

- **use appropriate language** at all times, avoiding sentences that may imply the existence of an improper conduct or that may thus mislead as to the real position and actual business objectives pursued by Lavazza;
- **write clearly**, avoiding speculations on competition issues (whether hypothetical or real);
- **clearly indicate** the **source** (such as a common customer) of any sensitive documentation, in terms of competition, received, taking care to keep track of the e-mail said documents were attached to, or write down the date, time, and circumstances in which said documents were obtained

- keep in mind at all times that **anything written may become part of the investigation case-file** in the event of inspections and/or requests for information (or be used in proceedings against Lavazza);
- **ask the ACO to review documents** with antitrust relevance, promptly sending them all communications received directly from a competitor and containing sensitive information.

As to the confidentiality of communications with legal advisers**, consider that**

- **only the communications exchanged with external legal advisers** are protected by legal professional privilege and cannot be acquired or used by antitrust authorities against companies. Employees must therefore add the wording *"privileged and confidential - client-attorney privilege"* to all the documents that sum up the advice of an external legal adviser and are drawn-up for the purpose of obtaining the opinion or assessment of an external legal adviser;
- **communications with in-house legal advisers**, on the other hand, **are not protected by legal professional privilege.**

6.6 Dealings with the Antitrust Compliance Officer

Every employee of Lavazza is required to contact the ACO when recognising the existence of conducts or circumstances which may expose the Group to a penalty for violating competition law.

In order to facilitate the ACO's assessment work, employees must:

- **relate** and illustrate every relevant circumstance (including the most unbecoming, serious, and/or embarrassing) with as many details as possible; and
- **remain at the disposal** of the ACO in view of any request for clarifications - including from the External Legal Advisers - or additional needs.

6.7 In case of Inspections

By virtue of their role as authorities in charge of compliance with competition laws, in the EU and in Italy respectively, **the European Commission and the Italian competition authority (AGCM) have the power to carry out inspections, typically unannounced** (known as "*dawn raids*"), at the offices, other facilities, and means of transport of an undertaking to search for relevant documents and to request the information needed to provide evidence of a violation of EU and/or national antitrust law.

Commission officials, unlike AGCM officials, **may also carry out inspections at the private residence of managers and employees** (though in this case the Commission needs the prior authorisation of the judicial authority).

AGCM officials are accompanied by **Guardia di Finanza** military personnel, whereas, in their inspections in Italy, EU Commission officials are typically accompanied by their AGCM counterparts and Guardia di Finanza military personnel.

The rules applicable to EU Commission and the AGCM inspections are complex. Most importantly, failure to collaborate with said authorities is regarded with the utmost seriousness, **leading to relevant and serious consequences in case of violation**.

Example: when an inspection cannot be conducted in one single day (e.g., when the volume of materials to be inspected is particularly large), the Commission may seal to some of the undertaking's facilities or to corporate books and documents for the entire duration of the inspection, to the extent necessary to its completion. In 2006 E.ON was imposed a 38 million Euro fine because, on the second day of the inspection, the Commission officials noticed that the seals placed over the door of one room the previous evening had been altered (the penalty was imposed in spite of the fact that E.ON tried to justify the circumstance by explaining that the seal had been altered due to the vibrations caused by the setting up of a conference room in the adjacent office; the use of a particularly aggressive cleaning agent; the high level of humidity in the air on that particular evening, etc.).

Below are detailed some practical instructions for all personnel who may come into contact with Commission or AGCM officials during an inspection.

Reception Staff Reception staff are the first to come into contact with Commission or AGCM officials on their arrival. It is imperative for reception staff to abide by the following rules and precautions, in compliance with the Procedure for handling on-site inspections:

- immediately alert the manager in charge of the offices being inspected, and the ACO;
- ask the officials to present their credentials and take the time needed to confirm their identity (they may do so by photocopying/scanning the credentials of each officer);

- take a scan or make a photocopy of the decision/authorisation (warrant) issued by the Commission or AGCM ordering the inspection, and immediately send the photocopy or scan to the office manager and the ACO;
- prevent the officials from wandering through the premises when not escorted by a member of staff. If required, give the officials a visitor badge;
- ask the officials to take a seat in an appropriate location, where no sensitive documents are kept, asking them to wait until the office manager and the ACO arrive (however, if the officials insist that they need to access the premises before the arrival of the office manager and/or the ACO, they must not be prevented from doing so);
- take note of the time the officials arrive and leave the premises.

Lavazza Managers and Employees Lavazza's employees and managers are called to "accompany" the officials in their inspections, providing, when asked to do so, any clarifications and explanations as needed. Employees and managers must:

- immediately receive the officials, verifying their identity (asking them to present their credentials) upon their arrival at the premises, and promptly inform the External Legal Advisers (by phone).
- escort the officials to a meeting room (where no sensitive documents are kept). Take the original or a copy of the decision or warrant ordering the inspection (taking care to carefully check the contents thereof);
- in case of inspection conducted by the Commission, if the inspection is ordered based on a *decision,* Lavazza is under *obligation* to cooperate; if the inspection is ordered based on a *mere warrant*, Lavazza is not under the obligation to undergo the inspection; however, it is good practice to allow the inspection so as to build from the start a constructive collaboration with the Commission;
- in case of inspection conducted by the AGCM, its officials will *always* have on them a decision ordering the inspection; the company is therefore *always* under obligation to undergo the inspection; furthermore, the decision ordering the

inspection is always accompanied by a judicial order notifying the start of a preliminary investigation, stating the perimeter of the alleged violation being investigated;

- identify the scope and the purpose of the inspection, asking officials to provide explanations, and make every effort to understand what said officials require in practical terms (in order to facilitate and accelerate their inspection);
- assist the officials in their work to access documents, whether in paper or electronic form. Officers have the right to view and copy all the documents that fall within the scope of the inspection (but not the documents that are covered by legal professional privilege);
- keep a copy of all the material collected by the officials;
- respond to the officials' requests for information regarding specific facts or documents connected to the scope/purpose of the inspection. On this regard, the officials can be asked to wait for the arrival of the ACO and the External Legal Advisers. In case of more complex questions or questions requiring checks, ask the officials to set these questions in writing and reserve the right to respond in writing as soon as possible;
- go through all the possible post-inspections options and scenarios (for example, internal audit, existence of the requirements to file for leniency with the competent authority, etc.).

What not to do:

- contact persons outside the Group in relation of the arrival of the officials;
- refuse to cooperate within the scope of an inspection ordered through a decision, as such refusal may expose Lavazza to a fine;
- **destroy documents with relevance to the inspection;**
- refuse to hand the officials any documents containing business secrets. The officials, in fact, have the right to access these types of documents and make copies thereof;
- tamper with the seals the officials affix on any of the commercial premises, record or file for the entire duration of the inspection, or bypass any block to the computer systems being placed by the officials, as such actions expose Lavazza to monetary penalties;
- refuse to answer the admissible questions posed by the officials or provide false and/or incomplete answers;
- respond to questions which answers which may entail self-incrimination.