In carrying out their activities, the companies of the Telecom Italia Group operate in compliance with the regulations and principles for the protection of free competition and, in line with the values contained in the Code of Ethics and Conduct, they promote fair competition, in keeping with the pursuit of the company objectives while respecting the interests of other market players, customers and stakeholders in general.

The Telecom Italia Group’s Antitrust Code of Conduct, approved by TIM’s Board of Directors on 20 February 2019, forms the basis of TIM’s new Antitrust Compliance programme, updated and strengthened to achieve the following objectives:

- to ensure compliance with antitrust regulations by providing appropriate directions to those who participate in company processes;
- to increase the general awareness of people within TIM about the importance of antitrust legislation and its impact on business activities;
- to provide everyone within TIM with a practical guide to preventing actions, conduct and omissions that violate antitrust legislation.

Aimed at all TIM personnel (top management, executives, employees), the Antitrust Code of Conduct illustrates the contents of the legislation protecting competition in a simple and accessible way and provides a practical guide on the kinds of behaviour to adopt when faced with specific situations that could be a cause of potential antitrust violations.

The new Antitrust Compliance programme, of which the Code is the fundamental pillar, will occupy the TIM Group during 2019, involving the company’s top management as a “testimonial” of virtuous conduct as part of specific periodic training and verification sessions for all employees.

The various activities defined by the programme are in line with European and national best practice and with the recent directions of the Italian Antitrust Authority (AGCM).

With the new Antitrust Compliance Programme we intend to encourage the adoption of virtuous behavioural models at all levels of the company, actively working to ensure that our business activity is guided by solid ethical principles that are not satisfied in mere formal compliance, but that can prevent all possible violations of antitrust law.

The Antitrust Code of Conduct presented here in a new updated edition therefore has a dual function. It is the set of rules that every TIM person must scrupulously follow in their daily work and it is the compass that must guide all our behaviour, as an integral part of our corporate culture.

The adoption of the Antitrust Code of Conduct confirms TIM’s strong commitment to reaffirm every day and to translate into virtuous behavior our corporate culture of integrity and responsibility in all our actions.
CONTENTS

ANTITRUST CODE OF CONDUCT OF THE TELECOM ITALIA GROUP ......................................................... 2
INTRODUCTION ........................................................................................................................................... 3
RECIPIENTS................................................................................................................................................ 3
PURPOSE AND SCOPE OF APPLICATION ................................................................................................. 3
LEGAL REFERENCES ..................................................................................................................................... 4
DESCRIPTION ............................................................................................................................................... 5
MISCELLANEOUS ........................................................................................................................................ 18
ANNEX ......................................................................................................................................................... 19
Introduction

The Group’s companies base their activity on the observance of the values and principles contained in the Ethical Code of Conduct and Organizational Model 231, as they are convinced that their business must be run ethically. In this particular respect, the Group’s companies are against adopting conduct that are in any way unlawful or improper in order to attain their economic objectives. In particular, in the course of carrying out their activity the Group’s companies operate in accordance with the rules and principles established to safeguard free competition and - in accordance with the values embodied in the Ethical Code of Conduct - they promote a fair competition that serves to pursue corporate aims, whilst respecting the interests of other players in the market, clients and stakeholders as a whole.

Moreover, the present document represents a guideline also with reference to the relationships between the Group and its suppliers, which already accept the principles set out in the Ethical Code of Conduct through a specific provision in their contracts.

In order to comply with antitrust legislation, the Group’s companies adhere to the following general principles: (i) they establish and pursue their commercial policy in a state of complete autonomy in relation to other competitors operating in the market; (ii) they operate entirely on the basis of their own strategic and commercial choices; (iii) they refrain from committing unlawful acts such as agreements restricting competition, abuses of a dominant position and exchanges of sensitive information with competitors.

Recipients

The recipients of the Antitrust Code of Conduct are the corporate bodies and employees of Telecom Italia, of all Telecom Italia Group national companies that are not listed, and of its two subsidiaries governed by the law of San Marino, namely Telecom Italia San Marino S.p.A. and Telefonia Mobile Sammarinese S.p.A. (hereafter “Telecom Italia Group” or “Group”). This document will also be sent to the governing bodies of national listed companies so that they can promptly update their internal procedures and it will also act as a reference for ¹ foreign ² companies.

Purpose and Scope of application

Ensuring full compliance with the rules set in place to protect competition is an integral part of corporate culture and of the operational choices made everyday by the Group’s companies. These companies are aware of the commercial, economic, reputational and operational risks that would arise from a lack or insufficiency of organizational rules and safeguards in antitrust matters; they consider that it is vital for personnel to be aware of,

¹ To be adopted in an analogous document by the relevant corporate bodies.
² To be adopted after making due adjustments to local regulations, processes and organizational structures.
and understand, the basic concepts of antitrust law applicable in the framework of the activities carried out.

The most effective way of ensuring full compliance with the rules adopted in order to protect competition is to provide the personnel with solid knowledge on antitrust legislation and its concrete application, enabling them to recognise, and hence avoid, possible risks.

This Antitrust Code of Conduct (hereafter also referred to as “Antitrust Code” or “Code”) thus sets out to provide a systematic reference framework for all the Group’s companies in antitrust matters. More specifically, the purpose of the Antitrust Code is:

- to summarize the principles of antitrust law and the main cases of breach of competition law;
- to single out, in light of the activities of the Group and the precedents of the Competition Authorities (including those regarding the Group), the areas where there is a possible risk of offences, in order to prevent them and allow for the timely intervention of the applicable corporate department (referred to as the “Antitrust Department”).

Non-compliance with the Code gives rise to the risk of seriously jeopardising Telecom Italia’s reputation and success and may give rise to very heavy penalties for the Group’s companies. Because of this, Telecom Italia has decided to:

- disseminate the Code widely, making it accessible to all personnel, whilst envisaging effective and periodical antitrust training programs;
- ensure that the Code is periodically revised and updated in order to adapt it to developments in antitrust law;
- set up the assistance required in order to provide clarifications regarding the Code’s interpretation and implementation through the Antitrust Department;
- envisage a system of disciplinary penalties in order to punish any violations;
- adopt specific internal procedures for reporting, assessing and dealing with any violations; and
- ensure confidentiality of identity and professional protection for those who report any violations, as required by the law.

**Legal references**

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

[2] Law no. 287 of 10 October 1990
Description

GENERAL PRINCIPLES

In accordance with the provisions of the Ethical Code, any behavior that infringes antitrust law is prohibited, with no exceptions.

The objectives of antitrust legislation are:

- to ensure that the markets operate in accordance with competitive criteria, limiting the conduct of companies having a dominant position and prohibiting agreements restricting competition;

- to safeguard freedom of business and consumers, fostering efficiency, innovation and development of competition based on competitive prices and better products (or services).

Therefore, the rules protecting competition prohibit any forms of behavior and conduct which - by reducing competitive pressure through such operations as mergers, abuses of dominant position or cartels - might prevent or obstruct the competitive process between operators in the market.

Defining the relevant market is the first, necessary step that has to be carried out in order to evaluate the eventual illegality - within the meaning of antitrust rules - of a commercial conduct or practice.

The concept of relevant market is specifically correlated to the antitrust analysis and therefore differs from the notions of market that are used in other contexts, including the regulatory context. It is the result of combining two variables: the product market and the geographic market which is taken into account in the case under examination.

The product market comprises any goods and services that are interchangeable or replaceable by the consumer and/or by other operators, in terms of their characteristics, their prices and the use to which they are destined. The geographic market can be defined as the territorial area in which competitive conditions are the same as far as the relevant product is concerned.

At European level, antitrust legislation is embodied in Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU), and in numerous European Union Regulations and acts and, at the national level, in Law no. 287 of October 10, 1990.

It is important to emphasize that in accordance with consolidated law, the relations between antitrust laws and regulations in the sector do not act on an exclusionary or overlapping basis, but complement each other.
This means that even though the Competition Authorities have to take account of the framework (legal and factual) in which the operators of the sector operate (in our case, telecommunications), they can still independently assess the behavior of companies so that the laws protecting competition can be applied in cases where the regulatory provisions allow companies to behave in a way that could block, restrict or distort competition.

In complying with antitrust rules, the recipients of the Code undertake not to commit the following types of offence.

**TYPES OF OFFENCE**

**A) Agreements**

Any agreements (arrangements, concerted practices between competing companies and decisions of trade associations) which have, as their object or effect, that of preventing, restricting or distorting competition in the relevant market.

The agreement is an arrangement whereby one or more companies adhere to a common strategy which limits, or is such as to limit, their autonomous behavior in the market, by establishing the lines of their reciprocal action or of their activity in the market.

The term agreement does not necessarily mean a formal agreement (e.g. a contract, letter of intent, gentlemen’s agreement, memorandum of understanding, etc.), but it may also stem from uniform and conclusive forms of conduct (so-called concerted practices).

The agreement may be either written or oral. For example:

- exchange of letters / emails / communications;
- conversations over the phone, in the course of a gathering, at a meeting or workgroup, and even in the framework of a trade association;
- exchanges of opinion or information.

Basically, any contact between competitors, even indirect, may give rise to a risk of breaching antitrust rules, especially if it is followed by a uniform conduct of competitors in the market.

Unlawful agreements may be restrictive of competition either by their object (in cases where, on the basis of their very nature, they restrict competition and do not require any assessment of actual or potential effects) or by their effect (in cases where an examination of their effects has to be carried out in order to assess whether or not they have a negative impact on competition).

Some forms of agreements - which theoretically come within the prohibition in question - may also have pro-competitive effects. For this reason, they may be exempted from the
prohibition, but only if they satisfy specific conditions. In order to evaluate the eventual pro- and anti-competitive effects of an agreement with competitors, distributors or suppliers, we suggest that you consult the Antitrust Department in order to obtain the necessary clarifications.

Types of agreements

Agreements may be either horizontal, in cases where they are between competitors, or vertical, in cases where they are between entities which, operating at a different level of the distribution chain, are not competitors for the purposes of the agreement.

Horizontal agreements

There are various examples of agreements that may arise between the Group's companies and their competitors:

- agreements on prices: any agreement which has as its purpose - or which may have the effect of - fixing, increasing, decreasing or keeping unchanged the price (or individual components of the price) of the products/services offered on the market;

- market-sharing agreements: any agreement that has as its purpose - or which may have the effect of - sharing the market, for example: a) sharing products/services among the various competitors; b) assigning the participants to the agreement exclusive geographic areas for the sale of products/offer of services; c) sharing clients or specific classes of clients among the various competitors, or d) agreeing on discontinuing sales of products or on offering services to certain clients or classes of clients;

- agreements on contractual conditions: any agreement that has as its purpose - or which may lead to the result of - agreeing with competitors uniform contractual conditions relating, for instance, to methods of invoicing or payment or to additional services offered to clients, suppliers or distributors, or to renewal or withdrawal procedures;

- limiting output: any agreement that has as its purpose - or which may lead to the result of - fixing, increasing, decreasing, maintaining, rendering stable or limiting the output of the companies that are parties to the agreement. An agreement between competitors may also aim to limit market opportunities or access, the level of investments, technical development or technological progress in the applicable sector (for example, with respect to technological progress, effectively preventing the participants in the agreement from undertaking, developing or exploiting projects on an independent basis);

- horizontal discrimination: any agreement aimed at applying different prices, conditions of sale or payment to clients in analogous situations or applying equal conditions to clients that are in different situations;

- boycotting: any agreement aimed at collectively boycotting one or more competitors, especially new entrants onto the market;
bid rigging: any agreement, the purpose or effect of which is to influence the outcome of tenders (both public and private) before or during tenders. For example, agreements whereby it is agreed with competitors: a) to take part in a tender or not to take part in it (for example with reference to the second case, to extend the contract with the outgoing supplier); b) to participate in it on certain conditions (at a certain price, at a higher or lower price); c) to submit an invalid or purely formal bid in such a way as to enable a competitor to win the tender; d) to submit a bid in the tender through a temporary association of companies (“Associazione Temporanea di Imprese - ATI”), even though the companies belonging to it can participate individually in the tender; e) to use sub-contracting as a way to side-step the competitive process;

exchange of sensitive information between competitors: any exchange of commercially sensitive information between competitors in any context (phone calls, correspondence, emails, meetings of committees, work groups or trade associations). This case is one of the most complex breaches of antitrust law, which prohibits all direct and indirect contact between competitors that has the aim or effect of reducing strategic uncertainties normally on the market with regard to the behavior of various operators.

Commercially sensitive information is information that relates in particular to: a) prices, discounts, margins, production costs, quantities, capacity, lists of clients and their characteristics; b) investments; c) commercial and industrial policies and strategies; d) production/distribution plans, volumes and strategies (e.g. marketing plans); e) conditions of distribution; f) research and development to launch new products and services.

The exchange of sensitive commercial information arises both in case of a reciprocal communication of information between competitors and also in case of unilateral disclosure (e.g. in which a competitor unilaterally communicates a sensitive information, a public announcement modifying prices or public invitations to behave in a certain manner on such occasions as conferences, interviews or meetings, social events, technical panels, work committees, etc.).

Sharing certain types of information (e.g. that which makes it possible for companies to achieve efficiencies and offer better services to clients and consumers) may even give rise to pro-competitive effects. Public information, or information on aggregate statistical and historical data, may be shared, for example, provided that, through such information, it is not possible to obtain information on the individual positions of the single companies. We suggest consulting the Antitrust Department to assess the nature of the information, its value from an antitrust standpoint and the legality of any exchanges of information.

Subject to the above, with respect to the prohibition on the exchange of commercially sensitive information between competitors, companies have the right to react intelligently and independently to the known or presumed behavior of competitors.
CASES FINED BY THE AGCM (Competition Authority)

I729 - Health: collusive agreement distorting the competitive process between 4 companies supplying magnetic resonance equipment

Alliance Medical S.r.l Toshiba Medical Systems Italia S.r.l, Philips S.p.A and Siemens S.p.A. were fined by the AGCM (Competition Authority) in 2011. The companies colluded on how to take part in a tender contract to supply electromedical equipment, replacing normal competition in a tender with a collusive agreement.

The sanction order brought to a close the inquiry initiated on the basis of a report by the company GE Medical Systems Italia S.p.A. which had filed a complaint regarding a possible agreement between the above-mentioned companies concerning the possible ways of taking part in the tender called by the Campania Regional Health Company (SO.RE.SA) for the supply of seven magnetic resonance devices through purchasing and renting, and the related assistance services.

According to the findings of the Antitrust Authority, the companies had a meeting and jointly decided on a strategy to take part in the tender called by SO.RE.SA. with a view towards sharing-out the service. Siemens and Alliance created an ATI for the direct supply of the three devices that had to be purchased, while Philips and Toshiba sub-contracted the remaining four devices to rent to Alliance.

According to the Authority, the exchange of sensitive information and the reaching of an agreement altered the normal competitive process between the companies involved in the tender, influencing the commercial strategies which were no longer independent.

Due to the agreement, Toshiba and Philips did not take the opportunity to take part directly in the tender, while Siemens and Alliance set up an ATI.

Decisions of enterprise associations

Antitrust law considers both direct methods of coordinating by enterprises and the institutionalised forms of cooperation where financial operators act through collective structures or a common body. In this context, concerted action between enterprises may be caused or facilitated by associations that, by their very nature, are the tangible expression of the joint interests of enterprises that operate in the same sectors of the economy.

The notion of association of enterprises applicable for antitrust purposes is quite extensive and includes wide-ranging types of cases, including trade associations, consortia and also cooperatives.

The essential element is that there is a common structure, of an essentially permanent organization, set up to express the collective will of the enterprises that belong to it, therefore influencing its individual actions. It follows, for example, that an entity - even of a collective nature - that does not have a coordination body, cannot be classified as an
association for antitrust purposes. The breadth of this notion aims to ensure that enterprises cannot escape competition rules merely on the basis of how they coordinate their behavior on the market (as opposed to concerted agreements or concerted practice).

On the other hand, with respect to the notion of ‘decision’ this includes any action, even if not in binding form, that constitutes the manifestation of the will of the enterprises who form part of a certain collective body.

Antitrust issues related to the activities of trade associations can be basically divided into two categories:

a. in some cases, by facilitating meetings between the members, the associations could provide an opportunity for them to define and implement competition-restricting agreements, or the vehicle for coordinating their behavior on the market in breach of competition law. For example actions that damage competition could arise in the following situations:

- meetings between associated enterprises;
- advertising and marketing initiatives;
- quality certifications or standards;
- promotion, patronage or endorsement of understandings, agreements, protocols that could influence the direct or indirect establishment of market conditions or on the procedures or timeframes of their performance: in those cases, the text of the agreement will first have to be checked to ensure it complies with antitrust laws.

b. In other cases, this type of activity by the association could run the risk of illegality, for example by establishing strict admission requirements, setting up work groups to encourage standardized activities or creating databases aimed at sharing commercially sensitive information. The following could involve potential antitrust violations from this viewpoint:

- restrictive clauses in the articles of association or regulations, and in self-regulation or ethical codes;
- studies, standard contracts, guidelines for the enterprises registered with certain market sectors to create barriers to the entry of competitors or exclude them;
- circulars;
- decisions;
- recommendations;
- suggestions for contractual clauses;
For further details of the conduct to follow in the day-to-day management of the professional activity and the forms of conduct which must be avoided in order to avoid possible risks, please refer to the operating guidelines for applying the Antitrust Code of Conduct.

CASES FINED BY THE AGCM (Competition Authority)

I742 – Restrictive competition agreement between steel companies manufacturing bars for reinforced concrete and electrowelded wire meshes

Upon conclusion of a complex inquiry which began in October 2015, the Antitrust Authority, in its meeting of 19 July 2017, imposed fines of more than 140 million euros on the leading steel companies operating in the steel bar market for reinforced concrete and electrowelded wire meshes.


In order to implement the restrictive competition agreement, the companies systematically used periodic meetings, including both meetings of the Nuovo Campider association, where commercially sensitive information on the purchase prices of metal scrap was shared every month (the main component of reinforced concrete and electrowelded wire mesh bars) and their respective manufacturing plans, and fortnightly meetings of the Steel Product Price Commission of the Brescia Chamber of Commerce, where the participating companies established, on a concerted basis, the sale prices of both products which them became the reference prices for the entire market.

Against the background of a serious steel sector crisis, the coordination of marketing by the companies meant that they obtained higher levels of revenue and margins than they would have obtained in normal competition conditions, to the detriment of the construction sector and ultimately, their customers.

Vertical agreements

Vertical agreements arise between operators belonging to different levels of the production chain and usually benefit from a more favourable treatment than horizontal agreements because - given that they do not involve directly competing companies - they may give rise to improved efficiency and generate pro-competitive effects.
For these reasons, the European Commission has introduced - through general regulations - a system which exempts, on a preventive basis, certain categories of vertical agreements (“block exemption”), if certain conditions are met.

In order to assess whether vertical agreements comply with antitrust rules, please refer to the Antitrust Department in order to obtain the necessary clarifications.

Fundamental restrictions

These are clauses with highly anticompetitive potential effects (so-called hardcore clauses), such as those relating to resale price fixing and those aimed at creating absolute territorial protection.

The following actions are always prohibited and nullify the block exemption for the agreement as a whole.

- the imposition of resale prices: any agreement (between supplier and distributor), the object or effect of which is to directly or indirectly impose a fixed or minimum resale price on the retailer/dealer or on the next customer in the distribution chain;

- partitioning the market into territories or groups of clients: any agreement whereby the supplier sets limits, on a direct or indirect basis, in the territory where, or the customers to whom, the retailer that is part of the agreement or its customers can resell the goods or services governed by the contract. There are a number of individual contractual clauses that were excluded from the field of application of the block exemption even though this does not mean that the exemption does not apply to the entire agreement in which they are found. This occurs, for example, where there is a direct or indirect non-competition obligation, where the duration is open-ended or for more than five years, or where there is a non-competition obligation that is tacitly renewable after five years.

For further details of the conduct to follow in the day-to-day management of the professional activity and the forms of conduct which must be avoided in order to avert possible risks, please refer to the operating guidelines for applying the Antitrust Code of Conduct.

B) Abuse of a dominant position

The abuse of a dominant position consists of two elements: (i) the company must have what is defined as a “dominant” position in the market and (ii) it must have adopted a conduct that can be defined as an “abusive exploitation” of this dominant position.

A dominant position arises in cases where a company has an economic power such as to allow it to obstruct effective competition in a market, through basically independent forms of conduct vis-à-vis competitors, customers and, ultimately, consumers.

The existence of a dominant position in a relevant market can be inferred from various factors, including a substantial market share (over 40%), a considerable difference between the market share of a company and those of its competitors, a strong economic
and financial power (or, alternatively, a substantial economic independence from competitors), a considerable technological advantage compared to its competitors, vertical integration and the presence of barriers to entry (e.g. legal, juridical, administrative barriers, etc.).

If a company has a market share of more than 50%, it is presumed that it has a dominant position.

A company that has a dominant position in a relevant market is obliged not to abuse its power and not to impede effective competition in the market in question. Case law confirms that any enterprises in a dominant position should be considered as having “special responsibility” that prohibits behavior that could be completely legitimate if carried out by companies that do not hold that market power.

The abuse of a dominant position is only prohibited by antitrust legislation, and not the mere fact of having such a position in a given market. In order to avert possible abuses, it is vital, therefore, that Telecom Italia should be aware of which are the markets in which it has a dominant position. Among these markets, we should mention those in which Telecom Italia has a significant market power. There may also be a dominant position in unregulated markets (e.g. SMS bulk market).

Some types of unlawful conduct

The forms of abuse are traditionally divided into abuses “exploitative”, comprising cases in which the dominant company manages to earn a monopolistic surplus profit by exploiting its market power, and abuses “exclusionary”, comprising cases in which the dominant company is in a position to prevent or obstruct competing companies from entering the market, from developing or from adopting aggressive competitive initiatives.

Types of “exploitative abuse” include:

– excessive (unfair) prices: even though there is no clear criterion for considering a price to be excessive, any sudden increase or any increase that takes the price of the product/service above a normal level (i.e. the price inclusive of all costs, depreciation and a normal profit margin) should be carefully considered;

– unfair contractual conditions: contractual conditions are “unfair” in cases where (a) the economic advantage of the company in a dominant position lacks any plausible commercial justification (e.g. clauses which make the payment of the price subject to a future unlikely event; clauses that provide for payment of fees for services that have not been provided); (b) they compel the purchasing company to accept limitations on its freedom of economic initiative (e.g. unjustified resale bans);

– tying practices: tying practices are defined as those aimed at forcing a client to purchase a product on condition that it purchases another or uses a particular service not functionally linked to the first product and separate from it.

Types of abuse “exclusionary abuse” are:
– exclusivity agreements that prevent competitors of the dominant enterprise from entering the market (for example exclusive purchasing obligations, through which a customer in a given market can only purchase, or mainly purchase, from the dominant enterprise). This category includes unlawful discounts, including loyalty rebates: these discounts are granted only if the client undertakes to secure all (or most) of its needs (however large or small) from the dominant company;

– practices aimed at eliminating or in any case reducing the contestability of its customer base (for example through clauses that provide for long-term contractual restrictions and particularly onerous exit clauses from contracts);

– predatory pricing: a predatory price arises in cases where a dominant company implements a sale strategy at “below-cost” prices, that is not justified by reasons of economic efficiency but by the intent of excluding its competitors from the market. In particular, in a first phase, the dominant company lowers the prices, deliberately suffering economic losses until it forces its competitors to leave the market, after which it increases the prices to monopoly levels, retrieving any losses it suffered in the first phase;

– refuse to enter into contracts: this case includes various types of practices such as the refusal to provide products to new or existing clients or to give access to an essential infrastructure that is not easily replaceable (for example the network infrastructures). In order for this abuse to exist, the refusal will have to refer to a fundamental resource for competing on a downstream market and not be supported by any objective justification. The abusive behavior of companies in dominant position may entail not only outright refusal, but also unfair delays or other types of impairment in the provision of the product/service, or by imposing unreasonable conditions in exchange for the supply (known as constructive refusal);

– margin squeezing: the margin squeeze between prices and costs arises in cases where a company that is vertically integrated and dominant in the upstream market - in which it controls a resource/service that is essential to carrying out the economic activity in a downstream market - applies high prices to counterparties/competitors operating in the downstream market (Other Licensed Operators - OLO), which purchase the essential resource/service and/or it applies discounts to final customers, which are such that they cannot be replicated by equally efficient competitors in the downstream market;

– discriminatory behavior: discriminatory behavior consists of applying, in commercial dealings with other contracting parties, dissimilar conditions for equivalent services, without a real economic justification. Typical examples of discrimination concern prices, conditions of sale, terms of payment applied to customers or competitors differently in analogous situations (or in an analogous manner in different situations), without an objective economic justification.

– exploitation of privileged information: the unlawful use of information held exclusively by the dominant company and which cannot be reproduced by the competitors may constitute an example of abuse. To that end, abuse may entail the use on the retail market, by the vertically integrated dominant enterprise, of inside information obtained
by the wholesale supply of services in upstream markets (for example for access and interconnection services to the land line telephone network) and the unfair storage of data relating to former customers who migrated to other operators;

- instrumental use of legal means for anti-competitive purposes (sham litigation): the threat or taking legal action to prevent or delay the entry of competitors onto the market, or in any case reduce the competitive ability, may constitute an abuse of dominant position; similarly, conducts aimed at using administrative procedures on an instrumental basis (for example on patents) with the purpose of obstructing current or potential competitors may constitute an abuse of dominant position;

- behavior aimed at influencing, with anti-competitive ends, the decision-making processes of public authorities through false and/or misleading information (for example providing false and/or misleading information to the regulatory authorities in order to prevent or delay implementation of measures that could encourage competitive development of the market);

- behavior aimed at preventing/delaying public tenders (for example refusal and/or delays by the outgoing enterprise in providing the information needed to the contracting entities to launch the tender procedures to select the new licensee and the bidders to take part in the tender and make competitive bids).

The above list of abusive practices is not binding.

<table>
<thead>
<tr>
<th>CASES FINED BY THE AGCM (Competition Authority)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A413 - Abuse of a dominant position in the postal services market:</td>
</tr>
</tbody>
</table>

In 2011, at the end of an inquiry begun following a complaint filed by TNT, AGCM decided that, starting from 2007, Poste behaved in a way that aimed to exclude competitors from the ‘certain date and time’ delivery service and the messenger notification service market which were no longer public services. It put up barriers towards the development of the value added service which were no longer public services.

According to findings of the Competition Authority, Poste Italiane, starting from 2007, exploited the market power that it held in the traditional postal services and based, inter alia, on possession of an integrated network, to enter both into the ‘certain date and time’ delivery service market and the messenger notification service market. The company carried out a number of conducts related to processing the correspondence of the competitors and applying predatory prices in particular. These prices could not be set by the competitors since they were made possible by the failure to charge the costs for the use of the network already used for the general postal service.

This behavior, which involves a single strategy, also aimed at maintaining its dominant position on the mass postal market and notification service using the postal service.

This strategy entailing the formulation of predatory pricing - always using the integrated network and in order to maintain its dominant position in the traditional postal service -
was also employed in the tender called by the Municipality of Milan and Equitalia in 2008 and relating to the delivery, using the messenger notification service, of fines and administrative documents and the “certain date and time” delivery services mentioned above. Poste won the tender called by the Municipality of Milan and three lots out of four of the Equitalia tender.

CASES FINED BY THE AGCM (Competition Authority)
A431 - RATIOPHARM/PFIZER:

In 2012, the Competition Authority (AGCM) found that Pfizer had abused its position to delay and/or prevent the entry of generic drug manufacturers onto the Italian market of anti-glaucoma drugs based on prostaglandin analogues.

The Authority found that Pfizer had executed a complex and well-organized exclusionary strategy involving the instrumental use of administrative procedures (i.e. the application for a divisional patent and subsequent application for a supplemental protection certificate in Italy) to artificially extend the duration of the patent protection for its specialized drug Xalatan, and instigating vexatious litigation that was not aimed at enforcing Pfizer’s rights since it was aware that its chances of success on the actions taken were low.

This litigation was carried out as follows: (i) letters to warn generic drug makers not to sell Xalatan generic drugs before the new patent expiry date; (ii) pressure on AIFA (Italian Pharmaceutical Agency) to prevent the issue of marketing authorizations (AIC) to the generic drug manufacturers, and the subsequently entry onto the formulary; (iii) the request for huge compensation for damage.

The preliminary inquiry carried out by AGCM revealed that by taking legal action and the pending civil and administrative suits, it made it more costly for generic drug companies to enter the market and resulted in a state of legal uncertainty regarding the possible sales of a new generic drug based on the active principle latanoprost. Pfizer therefore managed to actually maintain the exclusive rights to the production of latanoprost-based drugs, even after it lost its exclusive rights for the drug Xalatan.

CASES FINED BY THE AGCM (Competition Authority)
A437 - Esselunga/Coop Estense

In 2012, AGCM fined Coop Estense for having put an exclusionary strategy in place to the detriment of Esselunga, aimed at preventing, or at least strongly delaying, the entry or expansion of the competitor in the significant supermarket and hypermarket businesses in the Province of Modena.

According to the reconstruction by the Competition Authority, Coop Estense systematically objected to a number of attempts by Esselunga to open new food sales
points in potentially suitable areas for commercial establishments, and already available to it, especially in the Municipalities of Modena and Vignola, and even intervened in an instrumental manner in the administrative procedures in place to obtain the necessary authorizations.

According to the Authority, by delaying the procedures to assess the commercial development projects and issue the authorizations, Coop Estense actually influenced the economic valuation of said projects and therefore helped increase the costs of entering the relevant markets.

More specifically, the abusive behavior of Coop Estense comprised: (i) the acquisition of a minority portion of the former Consorzio area (an area in the centre of Modena) and the consequent “veto power” over the decisions for use and suitability for building of the entire area (power exercised by Coop Estense since March 2001 with a formal opposition to the original building plan of the area); (ii) the adoption of delaying tactics including the proposal, only apparently collaborative, to exchange areas, which was specious and instrumental since it could not be implemented on either an economic or technical basis; (iii) further obstacles to Esselunga’s plans to establish a business in an area in the Municipality of Vignola (by actually sending an expression of interest as part of that procedure, which resulted in the suspension and delay of all decisions relating to the Esselunga project).

For further details of the conduct to follow in the day-to-day management of the professional activity and the forms of conduct which must be avoided in order to avert possible risks, please refer to the Operational Guidelines for applying the Antitrust Code of Conduct.

***

In order submit reports on suspicious practices according to the Antitrust Code, please refer to point 4 of Ethical Code of Conduct and the “Whistleblowing” procedure, which regulates the process of receiving, analysing and dealing with reports, from whomsoever received, even if anonymously.

CONSEQUENCES OF VIOLATING ANTITRUST LAW

There are important consequences arising from violations of antitrust rules. They include:

- high fines for the Group companies (in accordance with Italian law and the law of the European Union, fines can amount to up to 10% of the total revenue of the enterprise that breached the law, understood to mean the group);

- invalidity of restrictive agreements (including finalised agreements) concluded in breach of antitrust rules;

- antitrust civil actions (including class actions) brought by competitors, business customers and consumers, claiming antitrust damages;
– necessity to adopt structural or behavioural measures with which the Group will have to comply in carrying out its activity, in addition to legal and regulatory obligations;

– negative effects on the Group’s commercial strategy;

– substantial damage to reputation and image;

– possible negative effects on rating, on profitability, on bank loans, and on participating in tenders;

– possible negative impact on the prices of securities traded on regulated markets;

– distracting the personnel from the company’s business;

– high costs on the legal defence of the Group.

It should be considered that fines may be inflicted by the Italian Antitrust Authority (IAA) or by the European Commission even if the unlawful purpose of the violation has not been attained and the disputed practices have actually not had restrictive effects on competition, in that it is sufficient for the Group’s companies to have adopted a behavior that is susceptible to distorting competition.

**Miscellaneous**

No practice definable as an antitrust offence can be justified or tolerated on the basis of the fact that it is “customary” in the sector in which the company operates.

None of the recipients of this Antitrust Code shall be discriminated against or in any way punished for having refused to adopt an anticompetitive conduct, even if the refusal in question has given rise to detrimental consequences for the company.

In the event of a violation of this Antitrust Code, of the internal procedures mentioned in it and/or of the applicable legislation, punitive/disciplinary measures will be inflicted on the persons responsible, in accordance with the modalities envisaged in the Ethical Code, in the law and in collective agreements and contracts.
Annex

OPERATIONAL GUIDELINES FOR APPLYING THE ANTITRUST CODE OF CONDUCT OF THE TELECOM ITALIA GROUP

Rules of behavior

Information is provided below, with reference to each of the infringements described in the Antitrust Code of Conduct, concerning the forms of behavior we suggest you follow in the everyday course of your professional activity and those which it is vital to refrain from in order to avoid possible commercial, economic, reputational and operational risks for the Group as a result of failing to comply with the guidelines provided hereafter.

A) Agreements

Horizontal agreements

The risk of being involved in anticompetitive agreements - the object or effect of which is to prevent, restrict or distort competition in the relevant market - exists on any formal or informal occasion in which you are in contact with competitors, at both the social and corporate level. When you are in contact with competitors:

DO NOT:

- discuss or agree with competitors retail or wholesale prices (or indeed single components and price formation modalities), the timing of price changes or other contractual terms and conditions such as invoicing or payment procedures;
- discuss or agree on restrictions of the respective strategies or activities with reference to markets, territories and/or clients;
- discuss or agree the exclusion of competitors, clients, distributors or suppliers from the market;
- discuss or agree any changes (e.g. fixing, increasing or decreasing) in the production/supply of services or the level of investments;
- agree with competitors to apply different prices and conditions of sale or payment to clients in analogous situations or equal conditions to clients that are in different situations;
- grant access to, exchange, seek access to, and discuss corporate information that is not public or that is confidential (e.g. prices, discounts, margins, production or distribution costs, quantities, capacity, investments, plans, production/distribution volumes and strategies, profitability, activity and marketing programmes, research and product or service development programs, launches of new products, etc.).
DO:

- remember that an anticompetitive agreement does not necessarily have to be finalised in writing or be binding on the Parties;
- determine the price of the service/product, and make your commercial decisions, in a situation of complete autonomy and independence from competitors;
- act independently in the market and on the basis of your own information;
- evaluate the compatibility of contractual initiatives and the potential partnerships with antitrust rules, with the assistance of the Antitrust Department;
- avoid any contact involving a direct or indirect exchange of sensitive commercial information regarding the Group’s activities;
- evaluate the sensitive nature of the information from the antitrust standpoint and the legality of certain exchanges of information with the help of the Antitrust Department;
- prior to participating in any meeting, committee, work group or panel in which competitors participate, carefully check that the agenda complies with antitrust law, by first consulting the Antitrust Department in case of doubt. After the meeting, check carefully that the matters discussed have been correctly recorded in minutes and, if there is an evident discrepancy with antitrust law, consult the Antitrust Department;
- document the sources of information legitimately acquired (e.g. through retailers), noting down, for instance, the date of acquisition and origin of the information, in such a way as to be able to demonstrate, if needs be, that the fact that you have certain information is not the result of unlawful contact with competitors.

Participating in associations

DO NOT:

- actively or passively participate - especially on the occasion of association meetings or “formal” meetings between members of trade associations - in discussions concerning sensitive commercial information;
- share sensitive information during social events held on the side lines of official meetings;
- supply sensitive information (in order to produce statistics) to associations or third parties, without having first checked with the Antitrust Department.

DO:

...
– participate in the meetings only after having checked the agenda, if necessary asking for clarifications if it is not sufficiently detailed;

– leave the meeting, if doubts emerge as to the debate’s compliance with antitrust law (making sure that this is duly recorded in minutes), inform the Antitrust Department and send a note to the association mentioning what happened.

– if doubts arise, check to ensure that the work of an association complies with antitrust law with the Antitrust Department.

Information Exchange

Not all exchanges of information between competitors are unlawful as such; for this reason, we need to assess the nature of the exchanged information on a case-by-case basis and the context to which it belongs. In any event, the general principle that should be borne in mind is that information must not be exchanged between competitors, unless this is necessary. If you go ahead with such an exchange, it is vital to adopt the following precautions:

Direct exchanges of information with competitors

DO NOT:

– share sensitive commercial information with competitors (e.g. prices, rebates, margins, production or distribution costs, quantities, capacity, investments, plans, production/distribution volumes and strategies, profitability, activity and marketing programmes, product research and development programs, launches of new products, etc.), regardless of the system of communication used (emails, phone calls, meetings, gatherings, WhatsApp, etc.);

– leave any emails unanswered concerning sensitive commercial information received from a competitor (see below, in the “DO” section);

– participate in any meeting, panel, work group, committee or social event if they involve unlawful discussions from an antitrust standpoint.

DO:

– be aware that the risk of exchanging sensitive commercial information exists in any private or professional context;

– refuse to discuss commercially sensitive information in any context. If sensitive commercial information is received by email, reply in writing that you are not interested in receiving it and kindly ask the competitor to refrain from sending you such emails;

– keep a record of discussions or meetings with competitors;
– immediately leave gatherings or meetings involving unlawful discussions and make sure that your departure/opposition is recorded in the minutes of the meeting;

– inform the Antitrust Department of what happened in writing.

Acquisition of the sensitive commercial information of competitors through suppliers/retailers

DO NOT:

– contact a competitor to discuss/verify/ascertain that the information received from suppliers/retailers is true and reliable.

– provide or attempt to provide sensitive information to a competitor through common suppliers/retailers.

DO:

– keep a written record of the source of the information received.

– contact the Antitrust Department if there are any doubts.

Participating in a tender

DO NOT:

– discuss with competitors the merits of the tender prior to, or during, the tender;

– send competitors emails and/or messages concerning the tender in which you intend to participate;

– share with, or provide information of any kind on your bid to competitors;

– discuss and/or agree with competitors fixing the price and/or the technical specifications of the bid;

– agree with competitors strategies in respect of allocating individual parts of the tender (e.g. by not submitting any bid at all or by submitting so-called token or fictitious bids);

– submitting a bid through a temporary association of companies (ATI) when you have the technical requisite and economic capacity to participate individually;

– discuss or in any case receive or exchange information with companies that participate in a tender called by a competitor relating to the technical and economic conditions of bids that are to be presented or have been presented.

DO:
formulate your bid independently, using lawful sources of information;

preserve any documents that prove that the tender strategy complies with objective and independently identified reasons (economic-financial, organizational and operational) and that the bid submitted is based on the costs sustained;

in the case of a bid submitted through an ATI with competitors, first contact the Antitrust Department;

in the case of submitting a bid through an ATI with non-competitors, first contact the Antitrust Department in case of doubt.

Vertical agreements

Vertical agreements that exist between operators belonging to different levels of the production chain may give rise to pro-competitive effects on the market; therefore, they benefit from a more favourable treatment than horizontal agreements. In spite of this, in order to avoid antitrust risks, it is necessary to adopt the following precautions, when it comes to selling products and accessories:

DO NOT:

– impose fixed or minimum prices on retailers;

– fix the retailer's margin or the maximum level of discounts that he may apply from an established price level;

– make the validity of an agreement subject to the retailer adhering to a given retail price level;

– if a retailer informs you of his price intentions, send the information received to another competing retailer;

– impose restrictions on the passive sales of the resellers.

DO:

– evaluate the compliance of contractual initiatives with rules on competition, with the assistance of the Antitrust Department.

B) Abuse of a dominant position

The simple fact of having a dominant position in a given market is not prohibited, as such, by antitrust law, which only condemns the abuse of such a position. Consequently, particular attention will have to be paid to the forms of conduct adopted by the Group’s
companies in order to avoid antitrust risks. To this end, first of all you must be aware of the markets in which Telecom Italia has a dominant position. Among these markets, we find those in which Telecom Italia has a significant market power. However, there may also be a dominant position in unregulated markets (e.g. SMS bulk market).

In the markets where Telecom has a dominant position:

DO NOT:

- apply prices or other contractual conditions in a different or discriminatory manner without economic and/or commercial justifications, unless this has first been explicitly approved by the Antitrust Department, insofar as the relevant lawfulness requirements apply;

- make the purchase of a product/service by the client subject to the purchase of another product or service not functionally linked to, and/or independent from, the former;

- impose exclusive purchasing obligations or grant loyalty rebates to the client subject to the fact that he undertakes to purchase from Telecom Italia products/services for all (or most) of his needs;

- apply below-cost prices;

- supply a service at an excessively high price to clients who are competitors in the downstream market and/or apply prices to end clients that cannot be replicated by efficient competitors;

- apply particularly onerous contractual terms without economic and/or commercial justification, or ask for payments for services which have not been given;

- refuse to supply an essential product/service to a purchaser to compete in downstream markets or do anything that delays or makes it more onerous to obtain the product/service, without economic and/or commercial justifications;

- carry out any pre-emption or lock-in activities, i.e. anti-competitive commercial policies (unreplicable prices, long-term contractual restrictions, withdrawal penalties, etc.) to pre-emptively capture customers, both on mature markets and in new market segments, or to eliminate and/or reduce the contestability of its own client base in order to discourage and/or prevent the entry of new firms into said markets;

- wrongfully use and/or store inside information held on an exclusive basis as an historical operator or obtained through the activities on a wholesale market, in order to obstruct and/or limit competition on a retail market;

- take legal actions or administrative procedures on an instrumental basis solely to obstruct and/or delay the entry of new entities onto the market, or to damage competitors;
do anything aimed at decisively influencing, on an anti-competitive basis, the decision-making processes of public authorities, providing false and/or misleading information, or activities aimed at obstructing and/or delaying the execution of public tenders.

DO:

– consult the Antitrust Department if doubts arise concerning the existence of a dominant position of Telecom Italia in a specific market;

– always consult the Antitrust Department, with a view to obtaining an explicit prior approval, prior to adopting a commercial strategy that envisages a price increase in products/services offered on the market;

– supply wholesale services to operators competing in the downstream market (OLO) on the same technical and commercial conditions on which they are provided to the retail divisions of the Group's companies and with no discrimination whatsoever;

– never behave in a way that resembles behavior condemned by the AGCM (Competition Authority) when their conclusions resulted in the imposition of fines, and comply with the instructions provided by the Antitrust Department to ensure compliance with the letters of warning in those orders (such as the inquiry A500B in which the Authority decided that TIM’s behavior on the SMS A2P (Application to Person) market entailed market squeezing of the competitors, which was an abuse of its dominant position).

In order to submit reports on suspicious forms of conduct or presumed infringements of the Antitrust Code of Conduct, please refer to the “Whistleblowing” procedure that regulates the process of receiving, analysing and handling reports, by/from whomsoever sent or received, even if anonymously.