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# UnipolSai Assicurazioni S.p.A.

# Antitrust Handbook

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# Antitrust Handbook

## 1 INTRODUCTION

The legislation protecting competition ("**antitrust legislation**" or "**competition law**") aims to guarantee free competition and the effective market operations, barring companies from colluding with each other or abusing their economic power in the markets in which they operate.

The impact of competition law on the internal activities and processes of UnipolSai Assicurazioni S.p.A. ("**UnipolSai**" or "**Company**") is widespread, with potential effects on the sale of products and services, on relations with agents and other intermediaries, with suppliers, customers and competitors, on joint venture agreements and other forms of commercial collaboration, including co-insurance and bancassurance agreements.

UnipolSai recognises competition and the rules aim to protect it as fundamental values of its corporate policy and culture, also protected by the Charter of Values and Code of Ethics of the Unipol Group and, in order to guarantee the compliance of its activities with current competition legislation, has adopted an Antitrust Organisational Procedure.

The violation of competition law can have serious consequences for the Company and personally for the individuals involved, i.e.:

- fines that can amount to as much as 10% of the annual global turnover of the Group;
- suspension or voiding of contracts entered into in violation of competition law;
- compensation claims from competitors or customers who believe they have suffered damages as a result of the infringement;
- damage to the Company's image and reputation;
- huge costs, wasted time and resources to defend the Company in investigations by the competition authorities;
- disciplinary measures, which may go as far as dismissal, for employees and executives involved.

Therefore, in carrying out their activities, all Company employees, including employees seconded from other Group Companies, members of corporate bodies and all those who operate, in any capacity, in the name and on behalf of UnipolSai (the "**Recipients**") "), within the limits of their respective duties and responsibilities, are required to fully abide by (and enforce) these principles and act in compliance with them, aware that, otherwise, they could expose themselves and UnipolSai to the risk of severe fines, including the disciplinary measures imposed by the Company.

With this document ("**Antitrust Handbook**"), the Company intends to reaffirm and strengthen its commitment to full compliance with the laws protecting competition. In fact, the adoption of the Antitrust Handbook is of fundamental importance in the context of an effective antitrust compliance programme, based on national and international best practices.

Although it does not intend to, nor can it hope to provide an exhaustive discussion of competition law, the Antitrust Handbook is a quick reference tool for the benefit of anyone who conducts business in the interest of UnipolSai and entertains relations with competitors, agents, intermediaries, customers or suppliers. The purpose of the Antitrust Handbook is therefore to offer a basic knowledge of the prohibitions imposed by competition law and help in understanding the obligations arising from this legislation, to facilitate the identification of situations and behaviours that could be most exposed to antitrust risk.

In addition, in order to enable Recipients to, effectively and in advance, identify conduct that could violate competition law, UnipolSai has established the figure of the Antitrust Compliance Officer ("**ACO**").

The ACO is the figure, within UnipolSai, who is entrusted with the implementation of antitrust compliance. For issues and/or activities that it deems necessary at any one time, the ACO operates in coordination with the Key Functions (i.e. the Audit Function, the Risk Area, Compliance and Anti-Money Laundering and the Actuarial Function), with the other Areas /Internal Departments of the Company, especially with the Legal Department and, where appropriate, through the latter department, it requests the support of external legal consultants specialised in competition law.

The ACO is the first point of reference for any doubt as to whether conduct is compatible with competition law. Recipients are asked to identify situations in which issues relating to competition law may arise and collaborate with the ACO to manage and resolve these issues.

In order for the ACO to perform its role as effectively as possible, anyone with doubts, problems, requests for clarification or indications on the compatibility of a given conduct with competition law is required to promptly contact the ACO.

# 2 OBJECTIVES

The main objectives of the Antitrust Handbook are to:

- ensure compliance with competition law by the Company;
- make the Recipients aware of the fundamental principles of competition law and increase their commitment to refrain from engaging in activities or conduct that may restrict or limit competition on the market (see Sections 5-8*below)*;
- provide recommendations and guidelines to avoid conduct that might be in conflict with competition law (see Section 9 *below)*.

# 3 SCOPE OF APPLICATION

Recipients are required to comply with the Antitrust Handbook.

The Antitrust Handbook exclusively concerns antitrust legislation and does not include references to other areas of law.

The conduct of UnipolSai, as well as that of its employees, are also governed by other rules, for example relating to insurance regulations or consumer protection.

Compliance with these regulations does not guarantee compliance with competition law, which the Recipients are required to respect in all their conduct; at the same time, compliance with competition law does not guarantee compliance with other general or sector-specific regulations applicable to the Company, which the Recipients are obliged to scrupulously comply with.

# 4 CONTEXT AND GENERAL CONCEPTS

The Antitrust Handbook is based on the principles stemming from EU and Italian competition law. The Italian legal system applies both the provisions of national law - mainly contained in Law no. 287/1990 - and, subject to certain conditions, the relevant provisions of European Union law - contained in the Treaty on the Functioning of the European Union ("TFEU") and in other regulatory documents adopted by the European Commission or other institutions of the European Union.

Competition law is mainly divided into three macro areas:

- **prohibition of restrictive agreements** (see Section 5): these rules prohibit agreements and/or concerted practices, between two or more companies at the same or different level of the production and/or distribution chain, as well as the decisions of associations of undertakings that limit or distort competition (for example, by setting sales prices, subdividing markets or customers, etc.). The main sources at European level are art. 101 of the TFEU and at national level art. 2 of Italian Law no. 287/1990.
- **prohibition of abuse of a dominant position** (see Section 6): these rules prohibit anti-competitive practices unilaterally carried out by a company that, due to its large market share and/or other factors, enjoys market power and exploits this position of dominance to the detriment of competitors, suppliers and consumers (for example, by imposing unjustified contractual conditions, limiting production or market access, discrimination, etc.). The main sources at European level are art. 102 of the TFEU and at national level art. 3 of Italian Law no. 287/1990.
- **preventive control of merger operations** (see Section 7): these rules require that, when certain turnover thresholds are exceeded by the companies involved[1], transactions that lead to a structural change in the market (for example, mergers, acquisitions and joint ventures) must be notified in advance to the antitrust authority. The main sources are, at European level, Regulation (EC) no. 139/2004 and, at national level, Articles 5-7 of Law no. 287/1990.

The Antitrust Handbook focuses mainly on the prohibition of agreements restricting competition and the prohibition of abuse of a dominant position. This is because the rules governing mergers between companies concern extraordinary business decisions, compliance with which is the direct prerogative of the company's top management.

[1] Law No. 118/2022 introduced the power for the AGCM to require, by giving reasons, the notification of "sub-threshold" merger transactions, i.e., transactions that do not exceed the turnover thresholds for prior notification, but meet certain cumulative conditions (see below, Sect. 7).

# 5 PROHIBITION OF RESTRICTIVE AGREEMENTS

Recipients must be aware of the possible implications resulting from antitrust legislation when interacting with competitors (current or potential), customers, agents or other intermediaries and suppliers. Those who commit UnipolSai in entering into agreements with competitors must request assistance from the ACO if such agreements may raise problems from the point of view of competition law, as described below.

Competition law prohibits **restrictive agreements** in the form of agreements, concerted practices and decisions of trade associations whose subject or effect is to restrict, limit or distort competition.

Pursuant to antitrust legislation, two or more separate companies are considered a single company - and, therefore, not independent - when their commercial conduct is determined by a common parent company, or when one is directly or indirectly controlled by the other. It follows from this that the agreements between companies belonging to the same group do not fall within the prohibition of anti-competitive agreements.

The concepts of "agreement", "concerted practice" and "decisions of trade associations" take on a specific connotation pursuant to antitrust legislation and are extremely broad. In particular:

- the concept of agreement is independent of the legal form adopted (or the civil law interpretation). Even a mere "handshake" or simple verbal understandings may be sufficient to establish the existence of an "agreement";
- concerted practices are forms of coordination through which companies, albeit without going so far as to implement a real agreement, knowingly defeat the competition risk by setting up a practical collaboration between them. Essential elements are (*i*) the existence of some form of contact between companies that allows them to know their respective commercial strategies (for example, a single exchange of sensitive information relating to business activities is sufficient) and (*ii*) the adoption of conduct by the companies involved that takes into account the information obtained through the "contact". The proof of a concerted practice can also be drawn from the mere existence of aligned conduct by the competing companies, when this alignment cannot be explained other than through cooperation;
- the decisions of trade associations fall under the prohibition of anti-competitive agreements when, even if not binding, they induce associates to coordinate their conduct on the market (for example, by exchanging confidential information, reaching decisions capable of standardising associates' conduct).

In many cases, the existence of restrictive agreements was ascertained on the basis of circumstantial evidence, such as: (*i*) oral discussions on the level of prices to be applied, also in the absence of an explicit agreement to that effect; (*ii*) parallel conduct (for example, price increases of the same amount or carried out in the same period of time, identical discounts or discount systems, etc.) and presence of "gentlemen's agreements"; (*iii*) exchange of information, whether one-way or two-way; (*iv*) signalling, including through the use of public communication tools, such as a commercial magazine.

In competition law, the concept of agreement includes both "**horizontal agreements**" (those concluded between companies operating on the same level of the production or distribution chain and, therefore, directly competing with each other), and "**vertical agreements**" (i.e. those concluded between companies operating at different levels of the

production or distribution chain).

An agreement - horizontal or vertical - can be anti-competitive **by object** or **by effect**.

The concept of "restriction of competition by object" applies to certain agreements between undertakings which, in themselves and taking into account the content of their provisions, the objectives pursued and the economic and legal context in which these contracts are concluded, reveal a sufficient degree of harmfulness to competition to conclude that the examination of their effects is not necessary, since certain forms of coordination between undertakings can be considered, by their very nature, as harmful to the proper functioning of normal competition. This is a limited, albeit not predetermined group of practices, that for example affect: (*i*) price fixing; (*ii*) subdivision of markets or customers; (*iii*) limitation of production; (*iv*) bid rigging.

When an agreement does not present a sufficient degree of harm to competition, such as to be considered anti-competitive *by object*, its *effects* must be examined in order to verify whether competition has, in fact, been hindered, restricted or significantly distorted.

The clauses of an agreement that are deemed to be in conflict with competition law are invalid in law and, if they are essential to the agreement, may render it null and void in its entirety.

An agreement restricting competition may be permitted (i.e., it may benefit from an exemption from the prohibition) if the positive effects on competition offset the negative impact of the restricted competition. To benefit from this exemption, the agreement in question must meet a series of cumulative requirements: (*i*) it must contribute to improving the production or distribution of products, or to promoting technical or economic progress; (*ii*) must set aside a fair share of the benefits arising from the agreement to consumers; (*iii*) must not contain restrictions that are not essential to achieve the virtuous result pursued by the parties; (*iv*) must not result in the elimination of a substantial part of competition related to the products or services affected by the agreement.

The existence of a possible exemption is based on a complex analysis of legal, economic and factual elements. Whether it can be applied must therefore always be assessed on a case-by-case basis, with the prior involvement of the ACO, as well as with the possible assistance of external lawyers with expertise in competition law.

## 5.1 Horizontal relations

### *i. Main cases of restriction*

The restriction of competition - even if only potential - can be achieved in different ways, examples of which are listed by the legislator. The most serious restrictions on competition include agreements for:

- **price fixing**: this category includes all agreements with competitors to ensure that the prices of goods or services offered by competitors increase or remain stable. "Price agreement" refers to an agreement on the price ranges to be applied and on the minimum and/or maximum prices, on retail and/or discounted prices, on the discount rates and on the levels of reimbursement or on the conditions of the policy or other conditions contractual (e.g. coverage, commissions, guarantees, payment methods, service charges, promotional activities);
- **share markets and/or customers**: this category includes any agreement with competitors to share the sale of goods or services, commercial opportunities, a

specific territory or customers among themselves. This form of agreement artificially eliminates the competitive pressure exerted by companies in a specific area or for specific customers, enabling companies to apply over-competitive prices, to the detriment of consumers, both in terms of prices and in terms of range of choice;

- **limit production, capacity, investments or technical development**: this category includes all agreements concerning production volumes or production limitations (for example, fixing maximum quantities that can be sold by each party to the agreement). Other types of agreements that limit free enterprise are also prohibited, such as those to limit (*i*) outlets, for example through networks of exclusivity clauses and (*ii*) investments and technical development, setting up a barrier against innovation and, therefore, on the quality and variety of products;
- **applying different conditions for equivalent services**: agreements by which several companies agree to apply discriminatory conditions towards certain subjects (competitors, customers or suppliers), placing them at a competitive disadvantage on the market in which they operate are not allowed. The most serious form of discrimination is what is referred to as a collective boycott, i.e. the agreed refusal to contract with a specific party, often used as a form of retaliation (for example, against parties who refuse to apply the minimum prices imposed);
- **prohibit the conclusion of contracts conditional on the acceptance by the other parties of supplementary services**: agreements by which the parties agree to make the conclusion of contracts with their customers dependent on the acceptance of additional services which, by their nature or according to commercial practices, have no connection to the object of the contracts in question (tying contract);
- **undermining competition in tender procedures ("bid rigging")**: these are instances in which competitors work together to increase the price or decrease the quality of goods or services intended for customers (public or private) who aim to purchase them through a tender procedure**.** Bid rigging is usually implemented through some recurring strategies, which are not necessarily mutually exclusive: (*i*) complementary bidding; (*ii*) failure to submit offers; (*iii*) rotation of offers; (*iv*) market sharing.

### *ii. Exchange of commercial sensitive information between competitors*

The exchange of information between competitors is a very sensitive aspect of competition law. It can take place directly or through a third party (such as, for example, a trade association or a broker) and is a characteristic common to many competitive markets, which can determine various types of efficiency improvements.

However, it can also entail restrictions on competition if it enables companies to understand their competitors' market strategies, thus reducing their respective decision-making independence and altering competitive dynamics within the market[2].

The exchange of information can be an accessory element in a broader anti-competitive agreement (tending to support the collusive balance between the parties to the agreement), and as an independent case.

When it concerns individualised data related to future prices or quantities, the exchange of information between competitors is considered anti-competitive by object much in the same way

[2] See European Commission, Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements, published in the Official Journal of the European Union on July 21, 2023 ("**Horizontal Guidelines**"), §§ 366-435.

as a cartel[3].

In other cases, its effects must be assessed, in order to verify whether it is likely to result in an artificial increase in market transparency that is likely to facilitate the achievement, retention or strengthening of collusive behaviour.

This assessment must be carried out on a case-by-case basis, taking into account first of all the characteristics of the market concerned (degree of concentration; transparency; stability of supply and demand; symmetry of the companies active on the market, in terms of costs, demand, quotas, range of products, etc.). In principle, it is effectively believed that the more concentrated, transparent, stable and symmetrical a market is, the more likely it is that an exchange of information may result in a further weakening of the (already weak) competitive dynamics.

On the other hand, it is always essential to consider the characteristics of the exchange of information. On this last point, the following aspects[4] in particular need to be considered:

(i) strategic nature of information: the exchange of information of a strategic nature, including that relating to prices and quantities in particular, is more likely to fall within the scope of the prohibition of restrictive agreements;

(ii) market share: the exchange of information is more likely to produce anti-competitive effects if the companies participating in the exchange have a sufficiently large share of the relevant market;

(iii) aggregated/individualised data: the exchange of individualised data at the level of the individual company (or, in any case, easily individualised) is more likely to give rise to anti-competitive effects;

(iv) age of the data: it is more likely that current data or, even more so, data relating to future strategies, will produce anti-competitive effects;

(v) frequency of the exchange of information: the higher the frequency of the exchange of information, the greater the likelihood of anti-competitive effects;

(vi) Public/non-public information: restrictive effects are considered unlikely if the information exchanged is effectively public, i.e. information that "*has become readily accessible (in terms of access costs) to all competitors and customers*"[5];

(vii) public/non-public exchange of information: an exchange of information carried out publicly (*i.e.*, equally accessible in terms of access costs to all competitors and customers) is less likely to lead to anti-competitive effects.

Exchanges of information that restrict competition may be exempted from the prohibition of restrictive agreements if the pro-competitive effects (*i.e.*, efficiency gains) offset the negative effects[6].

The Antitrust Handbook focuses on the exchange of a specific type of information, i.e. "sensitive" information. In fact, the exchange of information with these characteristics eliminates the normal uncertainties regarding the economic behaviour that the various competing companies intend to adopt on the market and their exchange therefore makes it possible to establish anti-competitive coordination of conduct, also in the absence of specific

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3 See Horizontal Guidelines, § 413; State Council no. 1750 of 27 February 2007, Airport supplies.

4 See Horizontal Guidelines, §§ 384-405.

5 See Horizontal Guidelines, § 388.

6 See Horizontal Guidelines, §§ 435-428.

agreements in this regard. Note that even the mere receipt of the above information by a competitor may be prohibited per se, as it is assumed that the recipient will take it into account when defining its commercial conduct on the market.

**Antitrust-sensitive information** is information that concerns the company individually, its current and/or future strategies and, in general, all information considered confidential. In practice, confidential information is information that you do not want a competitor to become aware of. In general, although such an assessment needs to be carried out in each case based on the context and characteristics of the market concerned, sensitive information is that which concerns:

- **prices, discounts, promotions, profit margins, pricing methods and policies, terms or conditions for granting credit and other conditions of sale**;
- **market volumes and shares**;
- **customers;**
- **costs and other production-related expenses**;
- **commercial actions and strategies;**
- **future business strategies, future investments, marketing plans**.

In any case, UnipolSai is entitled to independently conduct market intelligence activities, such as monitoring the activities of competitors and the general performance of the market. Market intelligence activities carried out independently and using legitimate or public sources are part of the normal activities that companies can engage in to prepare an effective and competitive economic strategy. Similarly, it is possible, for example, to promote statistical studies or benchmarking exercises, also using external providers, provided they comply with the antitrust legitimacy criteria outlined above and are subject to prior approval by the ACO, except in the case of databases managed by authorities, institutions, public bodies, as well as private parties that provide non-sensitive business information (such as Bloomberg, Reuters, Mergermarket, etc.).

If an employee of UnipolSai should receive sensitive information relating to competitors, he/she should immediately report it to the ACO, except in cases in which the Company, in the context of extraordinary business concentrations, has already initiated the appropriate measures to reduce antitrust risks, such as, for example, the setting up of clean teams and the signing of specific confidentiality agreements.

### *iii. Other agreements that may have a restrictive effects*

Many other types of contacts, agreements, joint projects with competitors may be considered prohibited restrictive agreements. The ACO is available to provide support and advice in cases where it is not easy to distinguish between lawful and illegal types.

Even horizontal cooperation agreements, which generally entail substantial economic benefits on the market, may, in some situations, lead to restrictions on competition. In particular:

- for research and development agreements[7], whenever the parties have significant power in the markets affected by the agreement and there is a low degree of competition in the innovation sector, they can slow down innovation, reduce competition between the parties and facilitate anti-competitive coordination of the companies participating in the agreement, also in the subsequent stages of production

[7] See Horizontal Guidelines, §§ 51-171.

and marketing;

- production agreements[8], which envisage the sharing of certain phases of production and the relative costs, as well as shared knowledge of costs and quantities produced, can, especially if the parties have significant market power, facilitate coordination on downstream markets, giving rise to a limitation of production capacity and/or actual production or the implementation of parallel pricing strategies;
- purchasing agreements[9] can reduce competition between the parties to the agreement in terms of product range, standardisation of costs (and possibly, as a result, of the prices applied downstream), as well as transparency regarding the quantities placed on the downstream markets, which may lead to alteration of normal competitive dynamics;
- agreements on Commercialisation[10], which pertain to product sale, distribution or promotion stages covered by the agreement, could, especially in concentrated markets and if the parties have significant market power, increase the level of market transparency and reduce competition on prices, also favouring possible effects related to geographical distribution and/or type of customer of the markets concerned;
- sustainability agreements[11], which pertain to the achievement of sustainability objectives in cooperation between competing companies, may, especially when the cooperation is not motivated by market failures (for example, low demand for sustainable products) or the impossibility of individually achieving these objectives ("first mover disadvantage"), to be understood as a form of unlawful coordination between competitors, whose efficiencies are particularly complex to assess, as they usually affect society in general and not the consumers of the products or services covered by the agreement.

### *iv. Focus: trade associations and other opportunities to meet competitors*

Meetings with competitors can take place in formal contexts (*e.g.*, scheduled meetings, trade associations, consortia, conferences or workshops) or informal ones (e.g., casual conversations, social events and informal meetings). In both cases, the antitrust legislation must be respected.

Participation in trade associations does not in itself constitute conduct contrary to competition law. However, given that these associations bring together competing companies, their activities may involve violations of competition law, with consequent liability of the member companies and also of the association itself.

It is absolutely forbidden for trade associations to envisage initiatives that have as their object or effect a limitation of competition between member companies. In this regard, anti-competitive conduct is one that aims to: (*i*) alter the independent definition of prices or other conditions of sale of the products or services provided by the member companies; (*ii*) limit production, in terms of the quantities and types of product in question, or the research and development activities of the member companies; (*iii*) allow the distribution of customers or sales territories among member companies.

The issue of circulars interpreting rules or other regulatory provisions or the approval

8 See Horizontal Guidelines, §§ 172-272.

9 See Horizontal Guidelines, §§ 273-316.

10 See Horizontal Guidelines, §§ 317-365.

11 See Horizontal Guidelines, §§ 515-603.

of a joint interpretation within the association may also constitute a violation of competition law. In particular, a violation of competition law takes place if these activities are likely to influence the conduct of the member companies on the market with regard to strategic and competitive variables. The interpretative circulars do not constitute violations of competition law when they are merely descriptive, essentially providing a neutral comment on legal or regulatory provisions. On the other hand, they may constitute violations of competition law where they take on an operational slant, setting up tools that may influence the conduct of member companies on the market. The risk that they are considered violations of competition law increases if they concern or have repercussions on sensitive elements from the point of view of competition (pricing elements, contractual conditions, etc.).

The activities of trade associations consisting of: (*i*) collecting and disseminating historical and aggregate information on member companies; (*ii*) market analyses; (*iii*) lobbying activities; (*iv*) drafting of codes of conduct; (*v*) organisation of training initiatives for its members; (*vi*) providing assistance and support to member companies, are generally legitimate from an antitrust point of view.

### *v. Focus: co-insurance*

With co-insurance, two or more insurers collectively assume the same risk, implementing a horizontal distribution of the risk and the indemnity. This tool is usually associated with the assumption of large or exceptional risks, which the companies may not be able to cover independently, or in order to guarantee balanced management of the company's risk portfolio.

Antitrust law recognises that in abstract terms, co-insurance is a "neutral" and lawful instrument, which insurance companies can use (and in fact do), usually in order to pursue the aforementioned purposes.

At the same time, however, co-insurance, pursuant to antitrust legislation, is a horizontal agreement and, as such, falls within the category of agreements that take on direct and immediate relevance for competitive purposes. Therefore, the analysis of possible unlawfulness of a co-insurance agreement must be carried out on a case-by-case basis, verifying whether or not it has an anti-competitive effect.

In other words, antitrust law prohibits the distorted use of co-insurance, if it is used to illegitimately coordinate the conduct of insurance companies, which could also be made possible by the information flows generated by the agreement, if they go beyond what is required to achieve this end. In the past, the use of this type of contract was considered to be in conflict with antitrust legislation also in cases where its use was intended, according to the competition authorities, to alter normal competition between companies participating in public procedures, for example, to undermine calls for tenders and enable the inclusion of a co-insurance company that was not awarded the tender.

### *vi. Focus: participation in tender procedures (public and private)*

The alteration of tender mechanisms is a common example of a prohibited restrictive agreement. In particular, the agreements for "tender tampering" (or bid-rigging) are cartels, that purposefully aim to seriously restrict competition. In fact, tenders are competition mechanisms specifically designed to accentuate competitive dynamics and to guarantee the selection of the most efficient competitors.

For public tenders, a handbook of the Italian Competition Authority ("ICA") identifies the most "typical" "behavioural anomalies" that provide a "clue" to "anti-competitive phenomena", to provide guidance to the contracting authorities in the "*observation of the*

*facts*"[12]. The four main unlawful situations indicated in the handbook are:

- The boycott of the tender **procedures**, which may occur when there is a collective withdrawal from the tender, only one offer is received or in any case the participants submit offers that are doomed to be rejected, in order to favour extensions of the contract with the usual supplier or pro-rata allocations of the orders between the companies involved;
- complementary bidding, where offers are submitted that contain amounts that are too high (also when compared to similar offers in other tender procedures) or unacceptable conditions to preserve the appearance of a competitive tender and favouring the assignment to the designated cartel member;
- bid rotation, which can be ascertained by an overall analysis of the results over a certain period of time that reveals anomalies indicating the likely existence of an agreement, such as recurring amounts, prices or discounts levels, standard subdivision of offers on the various lots or awards, same typing errors, same spelling, cross-references to requests from other participants in the tender, similar estimates or calculation errors, simultaneous delivery, even by the same party, of several bids on behalf of different participants;
- subcontracts or temporary business grouping of companies (ATI or RTI in Italian acronym) or, in general, joint participation in public tenders, which, in the insurance sector, can also often take place through the use of co-insurance agreements. Although these forms of participation, in abstract terms, constitute conduct that in itself is lawful (given that, as a rule, they enable smaller companies to join forces to comply with tender admission requirements), they do present inherent risks in terms of competition, both because they involve unavoidable exchanges of information between the participating companies, and because they can be used as a tool to implement sharing agreements.

The repression of these forms of collusion has been one of the priorities of ICA action in recent years[13]. In order not to commit antitrust violations when participating in tenders, it is therefore essential that each company decide independently whether and how to participate in them.

As regards, in particular, the joint participation in tenders, a grouping (also through the instrument of co-insurance) between current or potential competitors may alter the outcome of the tender, if it reduces the number of participants to such an extent as to weaken the competition or to facilitate the development of collusive behaviour, generating the risk that the tender will be awarded at higher prices or for lower quality levels. These risks are accentuated if the use of these tools is not supported by adequate, specific and documented reasons of a technical nature. According to the most recent case law and ICA practice, the superabundant or unnecessary nature of the grouping is not sufficient in itself to make it anti-competitive. In particular, also when the companies participating in the grouping

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12 ICA Handbook for contracting authorities, identifies competitive issues in the public procurement sector, 18 September 2013.

13 See recent cases I845 – *Gara manutenzione pavimentazioni tratte autostradali di Milano Serravalle – Milano Tangenziali* (provision no. 30419 of 13.12.2022); I846 - *Gare per la fornitura di vestiario professionale e accessori* (provision. no. 30053 of 1.3.2022); I821 - *Affidamenti vari di servizi di vigilanza privata* (provision. no. 27993 of 12.11.2019); I822 - *Consip/Gara Sicurezza e Salute 4* (provision. no. 27908 of 18.9.2019); I808 - *Gara Consip FM4* (provision no. 27646 of 17.4.2019); I806 - *Affidamento appalti per attività antincendio boschivo* (provision no. 27563 of 13.2.2019); I816 - *Gara SO.RE.SA. rifiuti sanitari Regione Campania* (provision no. 27546 of 30.1.2019).

could participate in the tender on an individual basis, it is necessary to assess whether the collaboration meets the objective need of the two companies to formulate an offer that is actually competitive with respect to the tender project. In these circumstances, the agreement may be considered non-restrictive or in any case justified[14].

The parties to a temporary business grouping of companies or a co-insurance agreement must in any case avoid exchanging sensitive information that is not strictly necessary for such a cooperation. This precaution also applies in the negotiation phase, during which only essential information can be exchanged to assess the feasibility and convenience of the project.

## 5.2 Vertical relations

As a rule, vertical agreements are less likely to give rise to anti-competitive effects, as they: (*i*) take place between companies that are not directly competing with each other; (*ii*) they can generate pro-competitive effects by increasing efficiency in favour, in the long run, of consumers.

The pro-competitive effects generated by vertical agreements may consist, for example, in mitigating the problem of vertical external factors (such as, for example, the setting of a retail price that is too high by the distributor); in stemming parasitic phenomena ("free riding"); in favouring the opening of - or entry into - new markets; in achieving economies of scale in the distribution of products; in ensuring standard qualitative conditions for distribution; in mitigating imperfections in financial markets[15].

However, vertical agreements can also have negative effects on competition. For example, vertical agreements may be prohibited if they excessively restrict the commercial freedom of the parties; distort competition between products of the same or different brands; raise barriers against the entry or expansion of other suppliers or buyers; facilitate collusion between suppliers or between competing buyers; limit parallel trade between EU member states[16]. Furthermore, the possible negative effects deriving from a vertical agreement can be reinforced by the presence of a network of similar agreements also entered into by other suppliers and buyers ("cumulative effects")[17].

Pursuant to antitrust legislation, vertical agreements between companies which, in the markets in which they operate, hold a share of less than 30% are generally excluded from the application of art. 101 TFEU (and are therefore lawful)[18].

However, the regulations establish that certain types of agreements or their specific clauses restricting competition cannot benefit from exclusion ("excluded restrictions"). Where such restrictions are included in a broader agreement, they would result in partial invalidity, that would only apply to the restrictive provisions (while the rest of the agreement could continue to benefit from exclusion of the application of Article 101 TFEU). In particular, the following are excluded restrictions:

14 See Horizontal Guidelines, §§ 347-365.

15 See European Commission, Guidelines on vertical restraints, C (2022) 248/01, of 30.6.2022 ("**Vertical Guidelines**"), § 16.

16 See Vertical Guidelines, §§ 18-21.

17 See Vertical Guidelines, § 22.

18 See Regulation (EU) 2022/720 of 10.5.2022 on the application of Article 101(3) of the TFEU to categories of vertical agreements and concerted practices.

- direct or indirect non-compete obligations, of indefinite duration or exceeding five years or which extend beyond the expiry of the agreement;
- obligations that directly or indirectly require members of a selective distribution system[19] not to sell brands of specific competing suppliers;
- obligations that directly or indirectly prevent buyers of online brokerage services from offering, selling or reselling goods or services to end users under more favourable conditions through competing online brokerage services ("parity clauses" or "MFN clauses").

The antitrust legislation also list other types of restrictions whose inclusion in a broader agreement renders the entire agreement null and void ("fundamental restrictions" or "hardcore restrictions"). These restrictions are generally restrictive by object. In particular, the following constitute fundamental restrictions:

- the imposition of fixed or minimum resale prices (also indirectly) ("resale price maintenance");
- in the cases of exclusive, selective or free distribution systems, the limitations in the geographic area or customers to which the purchaser or its successors in title may sell the products or services covered by the contract, subject to the exceptions expressly envisaged in the regulations;
- the limitation on the sale of components by the manufacturer, agreed between a supplier of components and a purchaser who incorporates these components in its own product.

These prohibitions apply whether UnipolSai acts as supplier or buyer.

If in doubt, and before signing vertical agreements that contain potentially prohibited clauses, it is essential to contact the ACO.

### *i. Focus: agency agreements*

The agency agreements falls, for the most part, outside the application of antitrust law. In particular, an agent is the person who is granted the power to negotiate and/or conclude contracts on behalf of another person (the principal), in his own name or that of the principal, for the purchase or sale of goods or services intended for (or to be provided by) the principal.

The distinction between the vertical agreements and the agency agreements lies in the "financial or commercial risk". When the principal assumes all the risks associated with the sale or purchase of the goods subject to the agency agreement, the obligations imposed on the agent in relation to the contracts concluded or negotiated on behalf of the principal do not fall within the scope of application of antitrust law.

This changes when the obligations in the relationship between agent and principal, such as the exclusive agency (according to which the principal cannot appoint other agents for a transaction, a customer, a territory) or single branding (where the agent cannot operate as an agent or distributor of companies in competition with the principal). In particular, single branding clauses, and those that extend beyond the duration of the agency agreement, may

[19] In a selective distribution system, authorised distributors are chosen by the supplier on the basis of predefined criteria - usually linked to the nature of the products - and may only sell to end customers or other authorised distributors but not to third-party resellers.

cause or contribute to (cumulative) effects of exclusion from the relevant market in which the goods or services covered by the contract are sold or purchased.

Lastly, it is necessary to avoid facilitating other collusive conduct of a horizontal nature in the agency agreement. This may occur if several principals use the same agents, while collectively preventing third parties from using them, or if some principals use agents to artificially and unduly increase the transparency of the principals on the market.

Similarly, also in the case of brokers, it is essential to avoid that the use of this intermediary act as a tool for the implementation of conduct that restricts competition (for example, price-fixing agreements, distribution of markets and/or customers, unlawful exchange of information, etc.).

### *ii. Focus: the Bancassurance and Assurbanca agreements*

Bancassurance agreements, by which an insurance company uses bank branches to distribute its policies, are a widespread form of distribution in Italy, as they allow companies to effectively distribute their products - in particular those relating to the life business - and to reach a large portion of customers represented by the customers of the partner bank. Similarly, Assurbanca agreements envisage the distribution of banking products through the distribution channels of the insurance companies (*e.g.* insurance agents).

From an antitrust point of view, this type of agreement is vertical in nature (as it involves operators active on different levels of the relevant market, insurance and/or banking). The main potential antitrust issues of these agreements are linked to the existence of exclusivity clauses (formal or de facto)[20], especially if they have a long duration, as well as the presence of parallel networks of agreements that could strengthen the possible negative effects of an individual agreement. In particular, in its own, the ICA based its analysis (*i*) on the market shares held by the banks concerned in the provincial markets for bank deposits and (*ii*) the importance of the insurance group party to the agreement.

In a nutshell, bancassurance agreements can be of three types:

(i) the bank may distribute insurance products of its wholly-owned subsidiary;

(ii) the bank and the insurance company may form a joint venture; or

(iii) the bank and the insurance company may enter into a distribution agreement between independent companies.

The analysis of possible restrictive effects deriving from the stipulation of a bancassurance or assurbanca agreement represents a particularly complex assessment and requires the examination of data relating not only to the Company, but also to the partner banks.

Therefore, before entering into such agreements, it is always necessary to consult the ACO.

[20] According to the Vertical Guidelines, exclusivity occurs where there is "*an obligation or incentive scheme which causes the buyer to purchase more than 80% of its requirements on a particular market from only one supplier*" (§ 298).

# 6 ABUSE OF A DOMINANT POSITION

When a company has a strong position on the market in which it operates ("relevant market")[21], it could be considered, pursuant to antitrust law, in a "dominant position" or as a holder of "significant market power". This market power may be held by a single company (individual dominant position) or, in particular circumstances, together with other companies (collective dominant position).

Market shares tend to provide reliable evidence of a company's market power, although it is not the only factor to be taken into account in establishing dominance. For the purposes of the antitrust analysis, it is necessary to take into account the total market shares held by all companies active in a given relevant market controlled by Unipol Group (given that they must be considered as a single company from the point of view of competition law).

Other elements to be taken into account are the market position of competitors; the possibility of expansion and entry into the market by current or potential competitors; and the bargaining power of the Company's customers[22]. In general, a company will not be considered dominant if it has a market share of less than 40%[23]. A market share of between 40% and 50%, on the other hand, could be indicative of market power/dominance. However, if it is found that UnipolSai has a market share close to or greater than 30% or more[24] in one of the markets in which it operates, this information must be reported to the ACO.

The holding of a dominant position is not in itself prohibited. The only prohibition imposed by competition law is in fact its abuse, which manifests itself through the conduct of the dominant company in relation to its competitors, customers or suppliers.

The conduct that may constitute an abuse of a dominant position is an open list and, therefore, is not predetermined by the legislator. The following non-exhaustive list provides a description of the main conduct considered abusive - and therefore prohibited by antitrust law - when carried out by companies with significant market power:

- predatory prices: application of abnormally low and below-cost prices;
- price discrimination: imposition of different conditions on different customers without any objective justification;
- refusal to deal: unjustified refusal to supply essential goods or services by the company that holds a dominant position (and which is often also active in the downstream market in which the buyer that has been refused the supply operates);

21 The identification of the relevant market (both from the point of view of the product and from the geographical point of view) is of fundamental importance in the competitive analysis. It is a complex and non-intuitive operation, to be carried out on a case-by-case basis, for which it is always necessary to involve the ACO.

22 See European Commission, Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings ("**Guidance**"), § 12.

23 See Guidance, § 14.

24 With the ICA provision no. 23678 of 19.6.2012, case no. C11524 - *Unipol Gruppo Finanziari/Unipol Assicurazioni-Premafin Finanziaria-Fondiaria Sai-Milano Assicurazioni*, the ICA had deemed that the post-merger entity would have a dominant position, as it would have had shares higher than 30% in a number of provincial distribution markets. According to the ICA, the 30% threshold, although lower than the market share normally indicative of a dominant position, would have been critical due to other factors characterising the insurance markets under analysis, such as price dispersion and the strength and number of competitors.

- margin squeeze: this consists in a vertically integrated dominant company setting a sale price of an input that is crucial for its competitors and a resale price for its derivative product at levels that leads to competitors not being able to achieve any profit margin in the downstream market;
- exclusivity agreements: a dominant company can close the market off from its competitors by binding customer demand, for example through the signing of exclusive purchase obligations or the granting of discounts conditional on exceeding a certain purchase threshold (on the other hand quantity discounts that reflect an effective reduction in costs, economies of scale and other benefits for the supplier are usually allowed);
- excessive prices: application of prices that are not cost-oriented and disproportionately higher than the economic value of the product or service provided;
- tying and bundling: when a dominant company makes the availability of a good or service hinge on the purchase of another product or service offered by it ("tying" or "bundling");
- self-preferencing: type of abuse that covers a multitude of conducts consisting, from an economic point of view, in exploiting the dominant position held in one market to expand its position in other markets.

# 7 PREVENTIVE CONTROL OVER BUSINESS CONCENTRATIONS

Some transactions between companies are subject to prior control by the competition authorities, and must be notified to competition authorities before they take place.

When the companies involved in a merger exceed certain turnover thresholds specified in Article 16 (1) of law n. 287/1990, the competition authorities have the power to examine the transaction before its finalisation in order to assess any potential restrictive effects. ICA also has the power to request, giving reasons, the notification of 'sub-threshold' merger transactions when three cumulative conditions are met: (i) only one of the two turnover thresholds is exceeded, or the total worldwide turnover of the companies involved is more than five billion euros; (ii) there are concrete risks to competition in the national market or a relevant part thereof, also taking into account the detrimental effects on the development and spread of small businesses characterized by innovative strategies; and (iii) the transaction has been finalized not more than six months ago.

In the event that they ascertain a competition vulnerability, the authorities have the power to prohibit the transaction or to approve it subject to compliance with specific obligations and conditions.

The violation of the obligation of prior notification of the transaction - and, where applicable, the prohibition of its implementation in the absence of authorisation - may result in the application of severe financial penalties as well as, where appropriate, the restoration of the *status quo ante*.

For merger transactions, it is always necessary to involve the ACO, by sending the ACO, in good time and before their final approval by the corporate bodies, all the supporting documentation required to enable an informed and complete assessment.

# 8 THE CONSEQUENCES OF UNFAIR COMPETITION

Violations of competition rules can have serious consequences for the Company and the individuals responsible.

***i. Invalidity of unlawful agreements***

Agreements entered into in violation of competition rules are void.

***ii. Considerable administrative fines***

A violation of competition law may expose the company to fines imposed by the European Commission or by the national antitrust authorities (in Italy, ICA). These fines can amount to as much as 10% of the company's annual global turnover.

***iii. Civil claims for compensation***

In addition to the fines imposed by the antitrust authorities, unfair competition breaches expose the Company to the risk of civil compensation actions by parties (in particular, customers and competitors) who are deemed harmed by such conduct.

***iv. Sanctions for natural persons***

For Recipients who are employees of the Company, the consequences may include disciplinary measures which, in the most serious cases, lead to termination of the employment relationship.

In some European jurisdictions, but not in Italy, the violation of competition rules may also have criminal repercussions for the representatives of companies held liable.

# 9 GUIDELINES FOR SPECIFIC SCENARIOS

This section contains a practical guide, illustrating the conduct to be followed in relation to the specific cases potentially relevant for the purposes of UnipolSai's antitrust risk management, namely:

(i) relations with competitors;

(ii) participation in trade associations and consortia;

(iii) statistics, databases and market reports;

(iv) stipulation of co-insurance agreements;

(v) participation in tender procedures;

(vi) entering of Bancassurance and Assurbanca agreements;

(vii) abuse of a dominant position;

(viii) drafting of company documents.

Recipients are required to read and observe the rules of conduct illustrated in the handbook.

## 9.1 Relations with competitors

What to do:

- contact the ACO in case of doubt as to whether an exchange of information on potentially critical issues from an antitrust point of view, or active or passive behaviour, could prevent, restrict or distort competition;
- expressly and, if possible, in writing, dissociate from any discussion with competitors concerning sensitive information from an antitrust point of view (as described above Sect. 5.1, *ii*);
- report the incident to the ACO.

What not to do:

- discuss or exchange sensitive information, directly or indirectly with competitors (for example, through commercial partners or intermediaries in common);
- reach agreements with competitors to apportion the services, customers or geographical areas in which the products/services are sold;
- reach agreements with competitors in order to implement joint strategies against a third party operator;
- reach agreements with competitors to force or otherwise induce their respective customers not to engage in business relationships with a third party competitor;
- reach agreements with competitors to refuse to deal with a particular customer or supplier;
- reach agreements or common understandings, either formal or informal, with competitors, capable of restricting competition on the market.

## 9.2 Participation in trade associations and consortia

Competition law establishes that the rules on participation in sector associations must not be detrimental to or exclude certain competitors (although the exclusion of participants based on objective criteria is allowed, provided they are not applied in a discriminatory manner). It is important that those who apply to join new associations or working groups report any doubts as to the correctness of the membership criteria to the ACO.

The topics that may be discussed during a meeting organised by the trade association are those of general interest, such as: (*i*) legislative and regulatory proposals; (*ii*) lobbying with public authorities; (*iii*) institutional promotion of the sector; (*iv*) technical issues (regulations, standards, etc.).

Furthermore, since trade associations can facilitate the possibility of improper contact between competitors, the following recommendations should be followed:

- not to participate in any exchange of information/statistics without first consulting the ACO;
- ensure that an agenda for the meeting is prepared and circulated in advance and that this is previously shared with the ACO, in order to verify that the discussion of sensitive issues from the point of view of antitrust legislation is not envisaged;
- request changes to the agenda if there are doubts as to the lawfulness of the issues

addressed;

- ensure that discussions during the meetings remain faithful to the items on the agenda. Ensure that all matters dealt with during the meeting are regularly recorded, possibly in the presence of a lawyer with expertise in antitrust matters;
- avoid taking part in any bilateral or multilateral meetings (in which prices, costs, production, customers, or commercial policies are discussed) that are held before or after the official meeting;
- refrain from initiating informal conversations with competitors that may even superficially address the aforementioned topics;
- if sensitive topics from an antitrust point of view are addressed, immediately and specifically object, requesting that the discussion cease immediately. If the discussion continues, leave the meeting. The dissociation must be expressed (and recorded in the minutes of the meeting), as even silent participation in a (single) exchange of information between competitors could constitute an antitrust offence;
- immediately inform the ACO if there is any doubt about personal conduct or that of the other participants during the meeting.

Similarly, participation in consortia between competing companies could also promote the implementation of collusive behaviour, as it necessarily implies that meetings and exchanges of information between competitors will be taking place. Therefore, also when participating in consortium activities, Recipients must:

- follow the recommendations provided above regarding participation in the activities of trade associations;
- refrain from any exchange of commercially sensitive information with competitors that is not strictly essential to the activities of the consortium.

## 9.3 Statistics, databases and market reports

Data on the activities, costs and market positioning of companies active in a given sector, as well as those pertaining to general market trends, are often collected and disseminated by sector authorities and trade associations to provide aggregate sector statistics. Other third parties (generally specialised commercial companies) may also collect data to carry out benchmarking activities and offer research and market analysis services, either for free or for a fee.

These activities are in principle lawful if the statistics, databases or reports disseminated:

- contain or concern data and/or information in the public domain;
- do not contain information individualised at single company level;
- contain information that is sufficiently old and does not reveal the current or future intentions of individual companies with regard to prices or quantities;
- are in aggregate form and it is not possible to infer the identity of the participants, not even by crossing-referencing and comparing other information.

These activities, pursuant to antitrust legislation, are viewed as exchanges of information whose possible restrictive effects must be assessed, on a case-by-case basis,

according to the characteristics:

- of the market concerned, with particular reference to its transparency, concentration, complexity, stability (in terms of supply and demand conditions) and symmetry (*i.e.* homogeneity of companies in terms of costs, demand, market shares, product range, capacity, etc.);
- of the information disseminated, with particular reference to (*i*) their strategic nature (e.g. if related to prices, discounts, customer lists, production costs, quantities, turnover, sales, quality, marketing projects, risks, investments, technologies, etc.); (*ii*) the market share held by the participating companies; (*iii*) the level of aggregation (it is particularly important that it is not possible to reconstruct the individualised information); (*iv*) the age of the data, which must also be assessed on the basis of the characteristics of the market concerned and, in particular, the frequency of price renegotiations (in fact, there is no predetermined historicity threshold, beyond which the data are considered to be old enough to no longer represent a risk); (*v*) the frequency with which they are disseminated; (*vi*) their publicity (*i.e.* the fact that the data exchanged can also be collected by other companies at similar costs); (*vii*) the degree of accessibility to third parties of the data exchanged (in terms of cost and access times).

Therefore, the assessment of the aforementioned activities from an antitrust point of view is highly complex and it is essential that they are subjected to the prior approval of the ACO, except in the case of databases managed by authorities, institutions, public bodies, as well as private parties that provide non-sensitive business information (such as Bloomberg, Reuters, Mergermarket, etc.).

Of course it is clearly acceptable to internally re-process information on the policies adopted or on the conditions applied by competitors, acquired through the analysis of public sources (websites, financial statements, half-yearly financial reports, etc.) or market intelligence activities, such as monitoring the activities of competitors. and general market trends.

## 9.4 Stipulation of co-insurance agreements

According to its employment policies, the Company uses co-insurance if it is unable on its own to assume the risk involved, or if it is appropriate for the balanced management of the overall risk portfolio. However, the stipulation of co-insurance agreements by the Company could give rise to critical issues from an antitrust point of view. These agreements, in fact, represent horizontal agreements within the meaning of antitrust legislation and could generate restrictive effects, as they inevitably give rise to information flows between competitors that might go beyond what is strictly necessary for the purpose of entering into and executing the agreement.

Furthermore, in order to avoid incurring in possible disputes relating to a distorted use of the co-insurance instrument, it is in any case necessary that the Recipients pay particular attention, during the negotiation or execution of a co-insurance agreement, also through a multi-firm agent (or other intermediary), not to share information that is not strictly essential for the purpose of concluding or correctly executing the agreement. If any doubts persist, it is always essential to contact the ACO in advance or, if necessary, inform the ACO of any potentially sensitive and non-essential information that has been exchanged with competitors or intermediaries for the conclusion of a co-insurance agreement.

Lastly, the co-insurance instrument is often used in the context of tender participation

(on this point, see also the guidelines dedicated to the issue of participation in tenders, Sect. 9.5 below). In such cases, particular attention must be paid, in order to verify that it does not lend itself to being considered as a tool for the pursuit of prohibited restrictive objectives, as described in section 5.1.vi above (for example, it is forbidden to use co-insurance to undermine calls for tender and allow the inclusion of a co-insurance company that was not awarded the tender).

In this context, the ACO may carry out sample checks on co-insurance agreements entered into by the Company.

## 9.5 Participation in tender procedures (public and private)

The participation by the Company in tender procedures, individually or in association, even where fully lawful, could give rise to critical issues from an antitrust point of view.

To reduce the possible antitrust risks associated with participation in tender procedures, at least the following operating rules must be observed:

- independent definition of the Company's conduct during tender, in accordance with the company's own economic considerations;
- in accordance with the internal regulations, write down and file the considerations/reasons that led to: *i)* the formulation of the technical and economic bid, including, if appropriate, those underlying the decision to participate in the tender procedure together with one or more competitors; *ii)* the decision to refrain from formulating a bid, only in cases in which the opportunity to participate in the tender procedure has been assessed.

Furthermore, **the following are prohibited**:

- arrangements with competitors to coordinate their mutual participation in public or private tenders;
- participation in public or private tenders in a pool with other competing companies, if the real reason lies, *inter alia*:
  - in avoiding or limiting competition for all or part of the services tendered;
  - in an exclusionary strategy, to prevent other companies from reaching the score necessary for award of the tender;
  - in solely formulating a bid price higher than the companies participating in the grouping would have submitted if they had independently participated in the tender;
- exchange sensitive information, in addition to that strictly necessary for the definition and implementation of a specific and lawful agreement for participation in public or private tenders as a grouping;
- participate in public or private tenders as part of a group, after initially submitting and subsequently withdrawing an independent bid, having met all the requirements to participate;
- reach an agreement to refrain from taking part in a public or private tender in exchange for possible subcontracting or reinsurance agreements;

- discuss or agree with potential participants in a public or private tender, on the advisability or intention of submitting a bid or on topics related to costs, prices, volumes or other strategic elements related to the services up for tender;
- underwrite any kind of commitment, whether formal or informal, to limit its freedom of action towards competitors or the contracting authority in the context of a public or private tender, without having first assessed the lawfulness of this commitment with the ACO.

If any doubts persist as to whether or not to participate in a public or private tender and the related tender strategies, it is always possible to contact the ACO in advance.

## 9.6 Stipulation of Bancassurance and Assurbanca agreements

The stipulation of bancassurance and assurbanca agreements by the Company could give rise to critical issues from an antitrust point of view.

The antitrust assessment of bancassurance agreements must be carried out by qualifying these as vertical agreements between a manufacturer (the insurance company) and a distributor (the bank). These agreements may take on anti-competition significance in cases where they make the reference market difficult to access for competitors and unduly curtail interbrand competition (i.e., competition between manufacturers of similar products that market them under different brands), also taking into account that these potentially negative effects of vertical restraints are reinforced by the presence of parallel networks of similar restraints.

In order to assess the possible risks deriving from the stipulation of these agreements, it is necessary:

- to identify the product and geographic markets affected by the agreement, i.e. the type of insurance (or banking) products covered by the distribution agreement (as a rule, for insurance markets, each insurance branch represents an independent product market, which, from a geographical point of view, has a provincial dimension);
- determine the market share held by Unipol Gruppo[25] in the affected provincial distribution markets, also distinguishing between the types of insurance products distributed (i.e. by insurance class);
- determine the market share held by the partner bank in the product and geographical market (normally the market for bank deposits in each province concerned), as these constitute an adequate proxy for the purpose of assessing the distribution capacity of the banking channel;
- determine whether the agreement in question has exclusivity restrictions, even de facto and whether it is possible to exercise the right to withdraw from the agreement by providing simple notice;
- determine the presence, if any, of similar agreements entered into, in the same provincial markets, by other companies that belong to the Unipol Group;
- to determine, to the extent possible on the basis of publicly available information, the possible presence of similar agreements entered into, in the same provincial markets, by other companies competing with other banking groups;

[25] For the purpose of antitrust analysis, it is necessary to take into consideration the total market shares of all companies operating in a given relevant market controlled by Unipol Gruppo (given that they must be considered a single undertaking from the point of view of competition law).

– verify whether other banking and insurance operators operate in the provinces affected by the agreement, and identify the relative market shares.

Generally, it is unlikely that an agreement relating to markets in which neither the Unipol Group nor the partner bank hold market shares exceeding 15% will generate any restrictive effects. In any case, the assessment of possible restrictive effects requires a complex analysis that must take into account all the factors mentioned in these guidelines.

Therefore, in cases of doubt, it is always essential to consult the ACO before entering into or renewing bancassurance or assurbanca agreements.

## 9.7 Abuse of a dominant position

A company is dominant when it has financial strength in the relevant market that allows it to hinder effective competition and to operate with a certain degree of independence from the possible reactions of suppliers, competitors, customers and end consumers.

Possible dominance in a relevant market must be assessed on a case-by-case basis on the basis of numerous factors, such as:

– the market shares[26] of the company, also in light of the competitive structure of the market itself (for example, strength of other competitors, market share stability, rate of innovation, customer loyalty, costs of switching customers from one supplier to another, etc.);

– competitive advantages of the company (for example, vertical integration, widespread distribution network, control over infrastructures - including IT - that cannot be easily duplicated, availability of important trademarks or patents, optimal production size, very extensive product portfolio, major financial resources, etc.);

– potential competition (for example, market entry costs for new operators, legislative or technological barriers, possible reactions of companies already present on the market, etc.).

The holding of a dominant position may also depend on:

– ownership of vital products for distributors, resellers and consumers ("must stock items");

– the availability of limited resources, required by competitors to operate in a market or by customers;

– the position of unavoidable business partner (for example when operators exclusively distribute specific data required to package products or services offered on the market).

A dominant position can also be held in procurement, when in effect it is the only possible commercial outlet or in any case by far the main one in certain relevant markets, so as to be able to dictate conditions to suppliers.

[26] Note that the calculation of market shares can produce very different results depending on the "market" used as a reference. For example, if the market is defined too broadly (for example, considering all types of a certain product, or the whole world as opposed to only a specific EU Member State), the market share of a company may appear lower than in reality. Therefore, it is very important that the market is defined correctly both from the point of view of the product and from the geographical point of view.

Two or more companies may hold a dominant position together (collective dominance) when, despite being independent and without reaching an agreement, they are induced to adopt common conduct due to the market structure. In particular, this happens in oligopolistic markets with just a few large operators, whereby (these being cumulative conditions):

- it is easy to identify a common conduct that is more advantageous for all (for example, a high price);
- the market is transparent and therefore means that one can monitor the conduct of others (for example, if they introduce lower prices or secret discounts);
- it is possible to engage in retaliation /against those who deviate from the common conduct (for example, by triggering a "price war", breaking important commercial relationships, attacking its customer base with selective discounts);
- the reaction of competitors who do not participate in the common conduct or that of customers would not be sufficient to upset the collusive balance.

As illustrated, the assessment of possible dominance (individual or collective) requires a complex and prudential analysis of many factors. Therefore, if on the basis of the elements indicated in the previous paragraphs, the position of UnipolSai (taking into account the overall position held by all the companies that are part of the Unipol Group on the relevant market concerned) should appear potentially significant in a given market, for any doubt related to possible dominance, it is always essential to contact the ACO and ensure that the business initiatives and activities of the Company abide by the indications provided below.

Abuse to limit competition is called exclusionary, because it tends to exclude competitors from the market. Abuse that takes unfair advantage of suppliers or customers are called exploitation.

The abusive conduct may also take place or have its effects in a market other than that dominated. For example: (*i*) the monopolist in an upstream market refuses, without objective justification, to provide essential input to a competitor in the downstream market, with the effect of excluding it from this market; or (*ii*) the dominant firm in market A applies predatory prices in market B, not dominated but contiguous, to weaken an active competitor on market B and prevent it from entering market A.

The following paragraphs provide a description of the main conduct typically associated with abuse of a dominant position. However, given the atypical nature of the concept of abuse, the list is not exhaustive. Therefore, the fact that the conduct to be carried out is not included in the list in question does not dispense with the need to contact the ACO, in case there is any doubt if there is even the doubt that the conduct in question may have an exclusion effect on competitors or constitute an unfair exploitation of commercial counterparties.

### *i. Unjustified refusal to deal*

In general, companies are free to decide with whom to enter into commercial arrangements. However, a company in a dominant position may commit an offence if:

- it terminates an existing supply relationship with a customer without objective justification;
- opposes customers or competitors with an unjustified refusal to supply them with an essential intermediate product; or
- unjustifiably refuses third parties access to an infrastructure that is essential for it to compete with its own business functions or with third-party customers in one or more

downstream markets.

Providing products or services under unsustainable or discriminatory conditions is also considered conduct equivalent to abusive refusal to supply (constructive refusal).

A refusal can be objectively justified, for example, when: (*i*) it is required to protect the investments made; (*ii*) the applicant company does not provide adequate guarantees of solvency or does not have the necessary technical skills to use the infrastructure in an appropriate manner.

If there is even just a doubt that UnipolSai (taking into account the overall position held by all the Unipol Group companies on the relevant market concerned) holds a dominant position on a relevant market, it must be ensured that any refusals to supply (absolute or constructive) are supported by objective justification and are submitted to the ACO in advance.

Tying or bundling obligations Tying or bundling are practices whereby a product or service is sold alongside another, different and separate, and only as a combination, or in any event at better conditions than if the two products or services were purchased separately. If a company is dominant in the market of the tied or bundled product, the sale of the latter together with the tied or bundled product may constitute abusive conduct.

This conduct can be pursued in different ways, for example:

- contractual tying or bundling, when the joint sale is the effect of a specific contractual provision;
- refusal to provide the tied product or service if the customer does not also purchase the bundled product;
- withdrawal of a guarantee, if the customer does not also purchase the bundled product;
- "technical tying", when the bundled product is physically integrated into the tying one;
- offer of discounts conditional on the customer's purchase of the bundled product.

The dominant company must therefore pay particular attention to the bundling of separate products and avoid imposing prices that may make the joint offer not repeatable by other operators in order to protect the customer of the product dominated by competition (defensive leverage).

According to the European Commission, tied or bundled sales are lawful on condition that an equally efficient competitor is able to compete by offering similar packages or, when bundling is not present, by separately offering the products or services subject to bundled sales. This verification requires very complex assessments, also from an economic point of view.

If the Company is found to hold a dominant position in a relevant market (taking into account the overall position held by all the companies that are part of Unipol Gruppo on the relevant market), the initiative must be submitted to the ACO before making any tied or bundled sales.

### *ii. Predatory prices*

Sales prices lower than the average avoidable costs ("sales at a loss"), practised by the dominant company as part of a long-term commercial strategy, are considered predatory. Involving an obvious sacrifice, this conduct is abusive in that it is presumably to acquire market shares to the detriment of those competitors who, without the same economic strength as the company in a dominant position, will be unable to respond with similar prices and will be thrown out of the market as a result. The underlying competitive concern is that, once competitors have

been eliminated, the dominant company will then be able to easily realign its prices and recover margins.

An audit often considered relevant by the ICA in the context of alleged predatory cases takes into consideration the replicability of the offer by competitors. According to the EU Commission, prices lower than the long-term average incremental cost cannot be replicated by competitors.

Given the complexity of the case, if UnipolSai is found to hold a dominant position in a relevant market (taking into account the overall position held by all Unipol Group companies on the relevant market), it is necessary to refrain from below-cost sales, and to always confer with the ACO before their possible application.

***iii. Exclusive purchase obligations, discounts and incentivising contractual conditions***

For a dominant company, it is unfair to make the granting of discounts conditional on customers' commitments to obtain supplies exclusively from the company, or in any case more than 80% of their requirements. It is equally abusive to set a system of quantitative thresholds for the granting of de facto discounts that are designed to achieve the same result (for example when the thresholds are set taking into account the customer's needs).

More generally, the application of loyalty discounts constitutes an abuse of a dominant position as they induce the customer to satisfy all or most of their needs with the dominant supplier, making it anti-economic to turn to alternative suppliers or making it more expensive or less convenient for the latter to access commercial market outlets.

Loyalty discounts can come in many different forms and combinations. In general, within a system of discounts linked to the achievement of various sales targets (e.g. certain thresholds within a given period of time), the retention effect is greater for discounts that:

- are non-proportional, i.e. that increase more than proportionally in the higher brackets;
- are retroactive, i.e. where the discount applies to all units sold, starting with the first, when certain thresholds are exceeded (for example, a discount of 2% if more than 100 units are purchased and up to 200, which will apply to all 200 units and not only to those exceeding the 100 units; 3% if more than 200 units are purchased, which will apply to all units not only those exceeding 200 units);
- accrue over very long periods of time (depending on the context and frequency of transactions on the market; even annual timeframes may be considered excessive by the competition authorities);
- individualised, i.e. when the purchase thresholds on which the application of the discount depends vary from customer to customer.

A system of quantitative discounts, linked to the achievement of various sales targets and for passing on to customers the savings in terms of efficiency achieved through the supply of higher sales volumes, is considered legitimate.

More generally, it is more difficult for a discount system to be abusive when its discounts
(*i*) are incremental (i.e. applicable only to the set brackets), (*ii*) with brackets based on a period of time that is not too long (in any case not exceeding one year), (*iii*) with proportionate discount levels and fairly close brackets, so as not to create an excessive competitive disadvantage for a customer if the target threshold is not reached,
(*iv*) always result in an effective price higher than the cost of the units sold.

In addition to the above, UnipolSai must not impose contractual obligations on its

customers by forcing them to purchase all or most of their requirements for a particular type of product or service from UnipolSai, unless there is objective justification or, in some cases, if the obligation is imposed only for a limited period of time.

Lastly, attention must also be paid to contractual conditions that - although not constituting discounts in the strict sense - are nevertheless de facto incentives, as they have a customer tie-in purpose or effect. For the same reason, problematic duration clauses may have a "binding" effect on customers, inducing them to concentrate their purchases with the dominant company and making it more difficult for them to switch to similar products offered by competitors.

If UnipolSai is found to hold a dominant position in one or more relevant markets (taking into account the overall position held by all Unipol Group companies in that market), attention must be paid to contractual conditions that may compromise the development of effective competition. If in doubt, always contact the ACO.

***iv. Margin squeeze***

It is considered abusive, on the part of a dominant company, to establish the sale prices of an indispensable input for its competitors and the resale price of the derivative product at levels that do not enable competitors to achieve any profit margin in the downstream market (margin or price squeeze strategy)[27].

Should Unipolsai hold a dominant position in a relevant market (taking into account the overall position held by all Unipol Group companies), it it would be advisable to consult the ACO in advace regarding any pricing initiative that may determine a margin squeeze for competitors and therefore hinder competition in downstream markets.

***v. Abuse of rights***

The dominant company is prohibited from conduct aimed solely at delaying or hindering the entry or permanence of competitors on the market by abusing the property rights connected to the possession of industrial/intellectual property rights or instrumentally and spuriously exploiting the powers foreseen by other regulations.

In cases where UnipolSai is dominant in a market (taking into account the overall position held by all Unipol Group companies on the relevant market), it is necessary to refrain from conduct which, although representing the exercise of a right, is only to hinder competing operators.

***vi. Excessive prices and unjustifiably onerous conditions***

It is considered abusive, by a dominant company, to apply excessive prices (i.e., prices that are not cost-oriented and disproportionately higher than the economic value of the product or service provided) or other unfair terms of sale.

A price can be considered excessive if the following two conditions are met:

- the difference between the price charged and the cost actually incurred by the dominant company is excessive; and
- the price is unfair in itself or with respect to the price of the products or services of

[27] According to the EU Commission, the economic margin squeeze test consists in verifying whether or not the actual price charged by the dominant company to its customers is higher than the sum of (i) the price paid by competitors to purchase the upstream product and (ii) the long-term average incremental cost that the dominant company incurs to package and market the product in question. If it is higher, then the conduct cannot be qualified as abusive, providing an equally efficient competitor can effectively compete with the dominant company downstream.

competitors or the price of the same product or service in different geographical areas.

If UnipolSai is found to hold a dominant position in one or more relevant markets (taking into account the overall position held by all Unipol Group companies in that market), particular attention must be paid to contractual conditions that may compromise the development of effective competition, becoming excessively onerous. If in doubt, always contact the ACO.

***vii. Price discrimination***

Discriminating against one customer (or supplier) over another, charging different prices for the same goods and thus exposing the first customer to a competitive disadvantage may constitute abuse. However, differentiation between similar customers is permissible if there is objective justification.

A specific case of price discrimination occurs when the dominant company applies prices to a customer that are higher than those applied to its subsidiaries or internal units operating in the same downstream market.

If in doubt, always contact the ACO.

## 9.8 Drafting of documents and communications

Administrative investigations and antitrust disputes are generally accentuated by inaccurate and/or poorly worded sentences or statements contained in company documents.

It does not matter how informal or confidential a communication may be, given that the Company's internal documentation – i.e., any written document, draft or final version, for internal or external use, official or informal, in paper or electronic form or on any other medium, developed or circulated by the Company, by its representatives
or by its employees, including internal communications with the ACO - may be included in an investigation file of an antitrust authority following inspections and/or requests for information, unless it is protected by professional secrecy or by the rules on the protection of personal data.

With regard to the confidentiality of communications with lawyers, note that:

- only communications with external lawyers are protected and cannot be acquired or used by the antitrust authorities against companies ("legal privilege"). It is therefore appropriate to mark with the wording "secret and confidential - lawyer-client communication", all documents that reflect the opinion of an external lawyer or that are prepared for the purpose of obtaining an opinion from an external lawyer;
- communications with internal lawyers, on the other hand, do not enjoy this protection. This also applies to all requests for antitrust advice addressed to the ACO, which must therefore be formulated according to the instructions provided below.

In any case, it is necessary to write clearly, avoiding speculative statements on the possible legitimacy or otherwise, from an antitrust point of view, of the conduct or actions that are the subject of the communication. It is also necessary to avoid speculative statements with regard to legal, hypothetical or real issues and, in general, formulations that may reveal the existence of any offences.

The following recommendations aim to provide assistance in the preparation of documents.

***i. Contents:***

The following expressions must be avoided in internal and external documents:

- Casual formulations regarding prices and competition: the use of casual or generic formulations in relation to problem areas, such as prices applied by competitors or distributors, can be perilous. It is necessary to write clearly. For example, writing that "*there is a sector agreement on price increases*" may presume the existence of an unlawful agreement, when instead it could only mean that sector developments are likely to lead to a price increase. It is better to be specific, e.g. by saying "*high interest rates indicate that prices are likely to rise*".
- Wording of the text: avoid the use of emotional language that may be exaggerated or focusing on the legitimate competitive benefits of a specific conduct, contract or transaction. For example, when evaluating a merger or a collaboration project, avoid using expressions such as "*the agreement allows us to increase the margin by 20%*". Instead, expressions such as "*efficiency benefits*", "*innovation*", "*cost reduction*", "*greater economies of scale*" or "*offering more attractive products for customers*" should be used.
- Terms that define market shares: the definition of the market pursuant to antitrust legislation tends to be quite different compared to how the business and marketing personnel understand it. However, the antitrust authorities may use these definitions as proof of the exact definition of "relevant market" in antitrust investigations. Rather than referring to the "market" or a "market share", it is preferable to refer generically to a "product sector" or a "product area".
- Casual statements on the exercise of market power. Expressions such as "dominate", "influence", "exclude" and "destroy competition" may suggest a use of market power (single or joint) that aims to exclude competitors or abusive exploitation of a strong market position. On the other hand, it is permissible to state that a company is determined to "compete aggressively".
- Legally correct conjectures. Expressions such as *"such agreements may violate competition law and therefore discretion is required"* are difficult to explain and such language immediately suggests unlawful conduct, even where in practice it may not exist.
- Terms that suggest the existence of coordination in the market: for example, avoid defining the lower prices of a competitor as "immoral" or "disrespectful"; avoid defining a customer who has moved on to the competition as a customer "stolen" by a competitor or, again, avoid referring to trade associations (or their work groups) as "clubs".
- Expressions that suggest "guilt". Avoid using expressions such as "*destroy after reading*" or "*top secret*", as this terminology could draw attention to the document.

***ii. Document management***

In order to ensure cautious document management, these guidelines must be respected:

- ask the ACO to review documents that may have antitrust relevance (such as, for example, agendas of trade associations and minutes of their meetings, cooperation agreements with competitors, etc.);

- expressly dissociate yourself and, if possible, in writing, from any communication received directly from competitors related to sensitive information. For example: *i)* if you receive confidential information via email from a competitor, you must respond by highlighting that you have never requested/authorised this exchange, asking the competitor to refrain from any further similar communication and in any case contact the ACO as soon as possible; *ii)* if during an association meeting sensitive topics from an antitrust point of view are addressed, it is necessary to point out that such a discussion is inappropriate and to ensure that one's dissent and withdrawal from the meeting are noted in the minutes, in addition to contacting the ACO to report the incident;
- promptly transmit to the ACO any communication received directly from a competitor that contains sensitive information, unless this communication is part of activities (e.g. extraordinary merger transactions) for which the necessary controls have already been initiated to reduce the antitrust risks (establishment of clean teams, signing of specific confidentiality agreements);
- precisely indicate, when preparing documentation for internal use, the legitimate source of sensitive information received on competitors (for example, from a customer, from an agent or as a result of internal processing of data obtained from databases or sources in the public domain, in both cases taking care to specify which ones they are), in order to avoid any suspicion of improper contact with competitors.

# 10 COLLABORATION WITH THE ANTITRUST AUTHORITIES

In exercising their supervisory powers on the application of antitrust legislation, the European Commission and the ICA may carry out inspections at the companies, generally with the assistance of the Special Antitrust Unit of the Financial Police (Guardia di Finanza), to collect information useful for ascertaining possible antitrust violations.

Companies subject to inspections ordered on the basis of decisions of the European Commission or the ICA are required not to hinder them, under penalty of very onerous fines.

In carrying out the inspections, the officials of the European Commission and the ICA may (and therefore should not be obstructed):

- access and seal off all the premises and means of transport of the companies under inspection;
- access premises other than those in which business activities are carried out, including the homes of managers, directors and other staff members of the companies concerned, having first obtained, in the case of private homes, the authorisation of the competent Public Prosecutor;
- examine and acquire a copy of all documents (on any form of support) useful for the purposes of the investigation that triggers the inspection;
- request information on facts or documents included in the inspection.

The ACO has the right to adopt, if necessary with the support of external lawyers, *ad hoc* guidelines containing more detailed instructions on the conduct that the Recipients must adopt during any inspections in which they are involved.

# 11 MONITORING AND ESCALATION

## 11.1 Monitoring

The ACO can always verify, also on its own initiative or with support from the Key Functions, that the Company's activities comply with competition law.

## 11.2 Escalation

The Recipients are required to make an internal report, through the channels and methods indicated in the Procedure for Reporting Violations ("Whistleblowing Procedure") adopted by Unipol Group and UnipolSai on September 28, 2023 (and not through the box antitrust@unipolsai.it), where they are aware of conduct or circumstances that could expose the Company to a sanction for violation of competition law.

# 12 GOVERNANCE OF THE ANTITRUST HANDBOOK AND PROCEDURES

## 12.1 Ownership of the Antitrust Handbook

The ACO is the owner of the Antitrust Handbook and any resulting procedures.

## 12.2 Interpretation

The ACO is responsible for interpreting the Antitrust Handbook.

## 12.3 Validity and revision

The Antitrust Handbook and Organisational Procedure apply from 1 January 2023, subject to publication on the company intranet.

# 13 CONTROL OF AMENDMENTS

## 13.1 Table of amendments

| Handbook **version** | **Author** | **Approval date** | **Description of the amendment** |
|---|---|---|---|
| New emission | ACO | December 15, 2022 | |
| Edition September 28, 2023 | ACO | September 28, 2023 | Update of regulatory references and formal changes; linkage with internal procedure Whistleblowing |

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UnipolSai Assicurazioni S.p.A.