Codice di condotta antitrust
Antitrust code of conduct
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1. **OBIETTIVO**

La presente MSG ha l’obiettivo di definire le linee guida di comportamento cui tutti i dipendenti di Snam e delle Società Controllate devono conformarsi per garantire la compliance di Snam e Controllate con i principi dettati dalla normativa applicabile in materia antitrust.

Il Codice di Condotta Antitrust (di seguito “Codice Antitrust”) si colloca nell’ambito delle iniziative dedicate a favorire lo sviluppo della cultura d’impresa in materia di tutela della concorrenza e a porre in essere procedure e sistemi idonei a ridurre al minimo il rischio di violazioni della normativa antitrust, nel più ampio ambito delle iniziative di compliance (231, lotta alla corruzione, etica di impresa, etc.) promosse dal Gruppo Snam.

2. **AMBITO DI APPLICAZIONE**

La presente procedura si applica direttamente a Snam e alle Società Controllate (di seguito Gruppo Snam) che la recepiscono formalmente, con tempestività e comunque non oltre 90 giorni dalla sua emissione.

3. **RIFERIMENTI**

**Interni**
- Codice Etico Snam;
- Modello 231 Snam;
- SNAM-MAN-001 “Manuale Organizzativo”;
- MSG-ANC-SNAM “Anti-Corruzione”;
- le normative in vigore presso il Gruppo Snam che regolano materie correlate all’oggetto della presente normativa e che si applicano per quanto non in contrasto con quest’ultima e in coerenza con l’assetto

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1. **OBJECTIVE**

This MSG has the objective of defining the guidelines of conduct to which all employees of Snam and its Subsidiaries must adhere to ensure the compliance of Snam and its Subsidiaries with the principles set forth by the applicable antitrust rules.

The Antitrust Code of Conduct (hereinafter the “Antitrust Code”) is one of the initiatives to promote the development of a corporate culture regarding competition protection and to establish procedures and systems that can minimise the risk of breaching antitrust rules, within the wider context of the compliance initiatives (231, fight against corruption, corporate ethics, etc.) undertaken by the Snam Group.

2. **SCOPE OF APPLICATION**

This procedure applies directly to Snam and its Subsidiaries (hereinafter the Snam Group) that are formally adopting it, promptly and in any event no later than 90 days after its issuance.

3. **REFERENCES**

**Internal**
- Snam Code of Ethics;
- Snam Model 231;
- MSG-ANC-SNAM, “Anti-Corruption”;
- The rules in force within the Snam Group governing matters related to the subject of this regimen applicable to the extent that they are not inconsistent with it and in line with the existing corporate organisational structure. The documents on adoption by the
4. DESCRIPTION OF THE PROCESS

4.1 General principles

The antitrust law consists of the complex of European and national standards to ensure the protection of competition among businesses. The ultimate goal of antitrust law is to support a free market economy by preventing companies already firmly established on a given market from agreeing among themselves to abuse or individually abusing their positions of economic power to distort the free competition "playing field" to the detriment of competitors and consumers.

The principles of the free market and competition are among the core values of Snam, recognised by both the By-laws and the Code of Ethics, and are an integral part of Snam’s corporate culture.
In doing business, Snam promotes competition, efficiency and appropriate quality levels in the providing of its services. The Snam Code of Ethics requires that business dealings and corporate activities have to be conducted within a framework of transparency, honesty, propriety and good faith, and in full respect of the rules put in place to protect competition.

The Antitrust Code is an expression of these principles and values. As established by the Code of Ethics, all Snam people are required to observe the laws and regulations in force, including the antitrust and anti-corruption laws.

A violation of the principles and contents of the Code may constitute a breach of the obligations arising from the employment relationship, or a disciplinary offense. Moreover, conduct that may represent unlawful acts from an antitrust perspective may also reflect activities that run the risk of corruption, identified and governed by Snam’s “Anti-Corruption” MSG-ANC-SNAM and the respective ancillary procedures meant to prevent risks of corruption that Snam people are expected to follow.

The Antitrust Code is meant for all:
- members of corporate bodies,
- executives,
- employees,
- co-workers who represent the company;
collectively referred to as “Snam people”.

The Antitrust Code contains the principles and rules of conduct that must be followed by Snam people in the protection of competition. The purpose of the Antitrust Code is to illustrate, in a simple and accessible manner, the contents of the rules protecting competition and to provide practical guidance.
on the conduct to be adopted in concrete situations that may give rise to potential antitrust violations.

The adoption of the Antitrust Code is part of the broader scope of the antitrust compliance programme developed by Snam, which is implemented by:

- Identification of the significant corporate activities that may present a risk of committing an antitrust offense, and the individuals who, by virtue of their responsibilities, may be more exposed to such risk;
- Appropriate communication and training initiatives means for all employees to ensure the awareness, effectiveness and proper implementation of the Antitrust Code; participation in the training activities is compulsory;
- The establishment, within Legal and Corporate Affairs and Compliance (ALESOC), of an Antitrust Watchdog who will provide the necessary support and assistance concerning application of the Antitrust Code;
- A monitoring programme designed to assess the effectiveness and allow for the continuous improvement and updating of the rules contained in the Antitrust Code.

Snam intends to spread the antitrust culture and increase the commitment of Snam people to refrain from engaging in activities or conduct that may be harmful to competition.

The main risks that the company may run as a result of committing conduct in violation of antitrust rules include:

- administrative fines that may reach 10% of the Snam Group’s turnover;
- voiding of agreements made in violation of antitrust rules;
Gruppo Snam;
- nullità degli accordi posti in essere in violazione della normativa antitrust;
- risarcimento dei danni causati ai clienti o ai concorrenti che possano aver subito un danno diretto e/o indiretto in seguito a una condotta antitrust;
- danno all’immagine dell’impresa;
- possibile impatto negativo sulle quotazioni dei titoli negoziati in mercati regolamentati;
- in alcuni Paesi, sanzioni penali per gli amministratori/dipendenti dell’impresa responsabili di violazioni antitrust.

Il processo di liberalizzazione che ha interessato il settore del gas naturale a partire dagli anni novanta ha consentito l’attuazione nello stesso della disciplina generale posta a tutela della concorrenza, prevedendo, per esempio, (i) l’abolizione dei monopoli legali; (ii) la separazione formale tra le attività di produzione, trasporto e vendita all’interno di gruppi verticalmente integrati ("unbundling") e (iii) il riconoscimento e la regolamentazione dei diritti degli operatori all’accesso alle infrastrutture in modo non discriminatorio.

Con l’adozione del Terzo Pacchetto Energia del 13 luglio 2009, l’Unione Europea ha ulteriormente posto le basi per la creazione di un mercato dell’energia competitivo e integrato. Di conseguenza le norme che regolamentano il funzionamento del mercato del gas naturale (e in particolare le attività del Gruppo Snam) e la disciplina a tutela della concorrenza sono normative complementari ed è fatto obbligo a ciascuna società operante nel settore di rispettare entrambe.

Il Codice Antitrust non intende fornire una trattazione esaustiva e completa delle norme antitrust né della casistica di situazioni in cui

- compensation for damages caused to customers or competitors who have suffered direct and/or indirect damage as a result of antitrust conduct;
- damage to the company’s image;
- possible negative impact on the prices of securities traded on regulated markets;
- in some countries, criminal penalties for company directors/employees responsible for antitrust violations.

With the adoption of the Third Energy Package of 13 July 2009, the European Union laid further groundwork for the creation of an integrated and competitive energy market. Hence, the rules governing the operation of the natural gas market (in particular, the activities of the Snam Group) and the discipline for protecting competition are complementary standards, and it is compulsory that any company operating in the sector adhere to both.

The Antitrust Code is not intended to provide an exhaustive and comprehensive description of the antitrust rules, nor of the range of situations where Snam people may become involved and which give rise to antitrust violations. The purpose of the Antitrust Code is to provide Snam people with a practical guide for identifying the most widespread situations that risk antitrust violations and to suggest the correct behaviour to adopt.
In order to obtain the necessary support, Snam people are required to inform their superiors and to contact the Antitrust Watchdog whenever they detect a situation of potential antitrust risk.

4.2. Specific antitrust cases

4.2.1 Concept of undertaking and relevant market

Antitrust law consists of the complex of European and national standards meant to protect free and balanced competition on the market.

The application of the European rules and the jurisdiction of the European Commission will depend on the occurrence – whether actual or potential – of conduct in trade between Member States: where the conduct is of such nature as to have effects exclusively on domestic markets, national rules and the jurisdiction of national competition authorities will apply.

The concepts of (i) undertaking and (ii) relevant market are of particular relevance in antitrust law.

Under antitrust law, an undertaking is any entity that carries out economic activities, irrespective of the legal form (public or private), of the way in which such entity is financed and of the profit-making purpose pursued by it.
Economic activity is understood to mean the production and marketing of goods and services.

Two or more separate companies may be deemed to be a single economic unit undertakings when their commercial conduct is determined by a shared controlling entity or when an entity is directly or indirectly controlled by another.

Acts committed by companies are of significance in terms of antitrust law to the extent that they have a restrictive impact, whether actual or potential, on competition in the market of reference. Indeed, individual acts are not assessed in the abstract but rather with specific regard to the concrete circumstances (economic, factual, etc.) in the “relevant market”. Only by making reference to the significant market is it possible to assess whether or not an act has had a positive or negative impact on competition.

The relevant market is identified by referring to a specific territorial and merchandising context.

A relevant product market comprises all products and/or services that are considered interchangeable or replaceable by the consumer by virtue of the characteristics of the products, their prices and their intended use.

The relevant geographical market comprises the area in which the businesses in question provide or acquire products or services, an area in which competitive conditions are sufficiently homogeneous so that it can be deemed distinct from neighbouring geographical areas because the conditions of competition in such areas are appreciably different.

Significant market is a concept that is instrumental for antitrust purposes as it is used to assess specific cases. Therefore, an analysis
of previous cases must obviously always be carried out, but it hardly provides guidance with certainty. Changes in competitive equilibriums and technological development may result in differing determinations as to significant market over the course of time, and also depend on surrounding circumstances.

In order to identify the relevant market, one must refer to the Antitrust Watchdog.

With reference to regulated activities in the natural gas industry, the decisions issued by Antitrust Authorities, namely the European Commission (the Commission) and the National Competition Authority (AGCM), enable one to identify the following markets:

a) from the point of view of the product:
- the natural gas transportation market;
- the natural gas storage market;
- the natural gas regasification market;
- the natural gas distribution market.

b) from the geographical point of view: the above-mentioned markets, as identified from the product standpoint, are national in dimension. An exception to this is the distribution market, which may, as the case may be, have a dimension that is equivalent to the territorial area where the natural gas distribution activity is carried out.

With reference to the business of the Snam Group, the markets correspond to the territory of Italy. This boundary may be subject to expansions when the business initiatives undertaken by Snam are taken into account (with the result that, in the future, the significant geographical market for the business of the Snam Group may also involve other Member States).

Con riferimento alle attività regolate del settore del gas naturale, la prassi decisionale delle Autorità Antitrust, ovvero la Commissione europea (Commissione) e l’Autorità nazionale garante della concorrenza (AGCM), consente di individuare i seguenti mercati:

a) dal punto di vista del prodotto:
- il mercato del trasporto del gas naturale;
- il mercato dello stoccaggio del gas naturale;
- il mercato della rigassificazione del gas naturale;
- il mercato della distribuzione del gas naturale.

b) dal punto di vista geografico: i sopramenzionati mercati, individuati dal punto di vista del prodotto, hanno dimensione nazionale. E’ fatta eccezione per il mercato della distribuzione che può avere, a seconda dei casi, dimensione equivalente all’ambito territoriale ove viene espletata la gara per l’affidamento del
4.2.2 Le intese restrittive della concorrenza

L’art. 101 del TFUE e l’art. 2 della legge 287/1990 vietano le intese tra imprese che abbiano per oggetto o per effetto di impedire, restringere o falsare la concorrenza. Ai fini dell’applicazione del divieto in questione sono considerate “intese”:
- gli accordi e/o
- le pratiche concordate tra imprese, nonché
- le decisioni di associazioni di imprese (o di altri organismi simili).

L’intesa è illecita ai fini del diritto antitrust se determina una forma di coordinamento e di cooperazione derivante da una concertazione tra le imprese. Nell’ambito di un’economia di mercato, ciascun operatore deve determinare in materia autonoma la propria politica di mercato. Ciò che rileva è la consapevolezza della partecipazione all’intesa da parte di almeno due imprese ad una concertazione.

- L’”accordo” non deve necessariamente risultare da un documento formale. Sono rilevanti ai fini antitrust, i contratti, le dichiarazioni di intenti, gli accordi orali.
- La “pratica concordata” consiste in una forma di coordinamento tra imprese che, pur non concretizzandosi in un vero e proprio accordo, costituisce una consapevole collaborazione tra imprese a danno della concorrenza. L’esistenza di una pratica concordata si può desumere da:

4.2.2 Agreements that restrict competition

Article 101 of the TFEU and Article 2 of Law 287/1990 prohibit agreements between undertakings that have the purpose or effect of impeding, restricting or distorting competition. For the purposes of the application of the prohibition in question, the following are considered “agreements”:
- agreements and/or
- concerted practices between businesses and
- decisions by associations of businesses (or similar bodies).

An arrangement is unlawful under antitrust law if it results in a form of coordination and cooperation that derives from collusion between businesses. Within the framework of a market economy, each player should independently determine its own policy on the market. The important thing here is knowledge as to the participation in the arrangement by at least two businesses in collusion.

- The “agreement” need not necessarily result from a formal document. For antitrust purposes, contracts, declarations of intent and oral agreements are significant.
- A "concerted practice" consists of a form of coordination between businesses that, even if not embodied in a true and proper agreement, constitutes a knowing collaboration between businesses to the detriment of competition. The existence of a concerted practice can be deduced from:
  (i) forms of “contact” between businesses that enable them to be aware of their respective commercial strategies (for example, exchanging sensitive information relating to business activities) and
  (ii) the adopting, by the businesses involved, of conduct that takes into account the
information obtained via the “contact” ("aligned conduct", such as price increases of equal amounts or carried out in the same timeframe, identical discounts or discount programmes, etc.).

For the purposes of the prohibition against concerted practice, it is not necessary to find the traces in minutes, meetings or sessions, but rather it is enough just to observe symmetry in conduct that, for example, may take the form of simultaneous changes in or a nearing of prices offered for a sufficiently significant span of time.

- “Decisions of trade association” consist of decisions taken in the context of trade associations directed toward the member businesses, even if non-binding in nature (for example, suggested prices or rates, or terms of sale). In the event of a breach of antitrust rules, both the association and its members are held liable and may thus be penalised. Anti-competitive arrangements are penalised even if not actually implemented by the parties.

Antitrust law distinguishes between:
- **horizontal arrangements** carried out between businesses that directly compete with each other on the markets involved;
- **vertical arrangements** that, on the other hand, are made between businesses belonging to different segments of the production or distribution chain.

Both types of arrangements are prohibited, whether created for the purpose of restricting competition or in cases where such restriction is just an indirect result of the arrangement.

Arrangements for the purpose of restricting competition are, by their very nature, considered harmful to the proper functioning of competition, with the result that, once an
Entrambe le tipologie di intese sono vietate sia nei casi in cui abbiano a oggetto una restrizione della concorrenza, sia nei casi in cui tale restrizione costituisca unicamente un effetto indiretto dell’intesa.

Le intese aventi a oggetto una restrizione della concorrenza sono considerate, per loro stessa natura, nocive al buon funzionamento della concorrenza, sicché, una volta che ne sia stato accertato l’oggetto anticoncorrenziale, non è necessario esaminarne anche gli effetti. Sono tali le intese aventi per oggetto:
- i prezzi (attuali o futuri), il livello degli sconti e le condizioni per il loro ottenimento, i margini di profitto, i termini di pagamento e altre condizioni di vendita;
- la ripartizione dei mercati (ad esempio, tramite l’attribuzione alle imprese partecipanti all’intesa di territori, gruppi di prodotti, clienti o fonti di approvvigionamento, quote di produzione o di vendita, ecc.);
- la limitazione della produzione o degli sbocchi al mercato (ad esempio, tramite il contingentamento della produzione o il boicottaggio di determinati concorrenti);
- lo scambio di informazioni commerciali confidenziali (ad esempio, dati relativi al valore o al volume della produzione o delle vendite, ai costi o ai prezzi);
- la cooperazione nella ricerca e sviluppo tra imprese con una quota di mercato congiunta significativa;
- il concertare la partecipazione a gare. Rientrano in tale tipologia di intese orizzontali sia gli accordi volti a coordinare la partecipazione (o la non-partecipazione) a una gara, sia gli accordi di partecipazione congiunta a una gara (ad esempio, tramite la costituzione di un’associazione temporanea di imprese). In linea di principio, la

anti-competitive purpose is ascertained, it is not necessary to examine its effects as well. Such arrangements include arrangements as to the following:
- prices (current or future), the level of discounts and the conditions for obtaining them, profit margins, payment terms and other terms of sale;
- the allocation of markets (for example, by attributing, to businesses participating in the arrangement, territories, product groups, customers or sources of supply, shares of production or sales, etc.);
- the limitation on production or on outlets to the market (for example, by placing contingencies on production or boycotting certain competitors);
- the exchange of confidential commercial information (for example, data on production or sales volumes or values, on costs or on prices);
- cooperation in research and development between businesses with a significant combined market share;
- concerted participation in tenders. This horizontal type of arrangement includes both agreements to coordinate the participation (or non-participation) in bidding on a tender as well as agreements on joint participation in a tender (for example, through the establishment of a joint venture). In principle, joint participation in a tender is viewed with disfavour in cases involving two or more businesses that individually would be able to meet the financial and technical requirements in order to individually participate in the tender;
- impeding or limiting production, outlets or access to the market, investments, technical development or technological progress;
- exacting dissimilar terms for equivalent performance;
- imposing additional performance unrelated to the purpose of the contract.
Prohibited arrangements are automatically void.

A restrictive arrangement may be exempted from the pertinent prohibition when it generates pro-competitive effects. In other words, agreements that have pro-competitive effects that outweigh the anti-competitive effects are not prohibited.

Arrangements that cumulatively fulfil the following prerequisites may benefit from this exemption:
- the arrangement objectively contributes to improving the production or distribution of products or to promoting technical or economic progress;
- a fair share of the benefits arising from the arrangement is destined for consumers;
- the arrangement does not contain restrictions that are not indispensable to achieving the above objectives; and
- the arrangement does not put the parties in a position to eliminate a substantial portion of the competition.

The prohibition against arrangements may be rendered inapplicable as follows ("efficiency defence"):
- the applicability of specific block exemption regulations issued by the European Commission for certain types of agreements between businesses most common in commercial practice (for example, in relation to agreements on research and development, agreements on specialisation and joint production, technology transfer agreements and agreements made between producers/suppliers and distributors whose market shares do not exceed 30%);
- a case-by-case assessment on meeting the prerequisites for individualised exemption.

partecipazione congiunta a una gara è vista con sfavore nelle ipotesi in cui coinvolga due o più imprese che singolarmente sarebbero in grado di soddisfare i requisiti finanziari e tecnici per partecipare individualmente alla gara;
- impedire o limitare la produzione, gli sbocchi o gli accessi al mercato, gli investimenti, lo sviluppo tecnico o il progresso tecnologico;
- applicare condizioni dissimili per prestazioni equivalenti;
- imporre prestazioni supplementari estranee all’oggetto del contratto.

Le intese vietate sono nulle di diritto.

Un’intesa restrittiva può beneficiare di un’esenzione dal relativo divieto qualora generi effetti pro-competitivi. In altri termini, non sono vietati quegli accordi i cui effetti pro-competitivi superano gli effetti anti-competitivi.

Possono avvalersi di tale esenzione l’intese che presentano cumulativamente i seguenti requisiti:
- l’intesa contribuisce obiettivamente a migliorare la produzione o distribuzione di prodotti ovvero a promuovere il progresso tecnico o economico;
- una congrua parte dei vantaggi derivanti dall’intesa è riservata ai consumatori;
- l’intesa non contiene restrizioni non indispensabili a raggiungere i predetti obiettivi; e
- l’intesa non pone le parti in condizione di eliminare una parte sostanziale della concorrenza.

L’inapplicabilità del divieto di intese (c.d. efficiency defence) può derivare da:
- l’applicabilità specifici regolamenti di esenzione per categoria emanati dalla Commissione Europea per alcuni tipi di accordi tra imprese più diffusi nella prassi
Both for cases of individual exemption and for those covered by the block exemption regulations, the task of assessing the possibility of whether a given arrangement should benefit from such exemption is left to the responsibility of businesses and their legal counsel (“self-assessment regime”).

The assessment of the applicability or inapplicability of the prohibition against arrangements is to be made by the businesses involved. Indeed, the possibility of obtaining an “authorisation” from the Commission in this regard has been eliminated.

Therefore, it is particularly important to conduct a proper analysis and preparation of the contractual documentation and of the practices beforehand, working in conjunction with the Antitrust Watchdog.

La valutazione circa l’applicabilità o inapplicabilità del divieto di intese deve essere effettuata dalle stesse imprese coinvolte. È stata infatti eliminata la possibilità di ottenere una «autorizzazione» della Commissione a riguardo.

Per questo motivo è particolarmente importante svolgere una corretta analisi ed elaborazione della documentazione contrattuale e delle prassi ex ante in collaborazione con il Presidio Antitrust.

Di seguito è indicato un elenco – non esaustivo e a mero titolo esemplificativo – delle condotte vietate che le Persone di Snam devono astenersi dal porre in essere:
- Discutere, accordarsi con clienti/concorrenti/fornitori per il boicottaggio di clienti/concorrenti/fornitori o per impedire l’ingresso nel mercato da un concorrente/cliente.
- Concordare con un concorrente di non farsi concorrenza in relazione al rispettivo portfolio clienti;
- Concordare con un concorrente la ripartizione di un determinato territorio;
- una valutazione caso per caso circa la ricorrenza dei requisiti per l’inapplicabilità individuati.

Sia per i casi di esenzione individuale sia per quelli rientranti nei regolamenti di esenzione per categoria, la valutazione riguardante la possibilità che una determinata intesa possa beneficiare della relativa esenzione è rimessa alla responsabilità delle imprese e dei loro legali (c.d. regime del self-assessment).

Both for cases of individual exemption and for those covered by the block exemption regulations, the task of assessing the possibility of whether a given arrangement should benefit from such exemption is left to the responsibility of businesses and their legal counsel (“self-assessment regime”).

The assessment of the applicability or inapplicability of the prohibition against arrangements is to be made by the businesses involved. Indeed, the possibility of obtaining an “authorisation” from the Commission in this regard has been eliminated.

Therefore, it is particularly important to conduct a proper analysis and preparation of the contractual documentation and of the practices beforehand, working in conjunction with the Antitrust Watchdog.

The following is a non-exhaustive list which gives some examples of the prohibited conduct from which Snam people must refrain:
- Discussing or agreeing with customers/competitors/suppliers to boycott customers/competitors/suppliers or to impede entry into the market by a competitor/customer;
- Agreeing with a competitor not to compete in relation to its respective customer portfolio;
- Agreeing with a competitor to divide up a given territory;
- Exchanging, with competitors, detailed and recent information on costs, future commercial plans and/or information that is usually confidential and is of commercial importance;
- Discussing the above information within the framework of trade associations;
- Telephoning a competitor to check its willingness to offer terms and conditions.
- Scambiare con i concorrenti informazioni dettagliate e recenti relative a costi, piani commerciali futuri e/o altre informazioni usualmente confidenziali e che abbiano una rilevanza commerciale;
- Discutere delle suddette informazioni nell’ambito di associazioni di categoria.
- Telefonare a un concorrente per verificare la sua disponibilità a praticare termini e condizioni simili a quelle praticate dalle società del Gruppo Snam.
- Concordare con le imprese concorrenti l’impresa che risulterà vincitrice/che rinuncerà ad una gara;
- Concordare con le imprese concorrenti, in relazione alla partecipazione ad una gara;
  (i) la previa consultazione prima di presentare le offerte di gara;
  (ii) la forbice di prezzo entro cui presentare la propria offerta;
  (iii) l’assegnazione in subappalto di parte dei lavori e/o servizi e/o forniture all’impresa che rinuncia a partecipare alla gara.

In caso di dubbi circa la compatibilità con il Diritto antitrust di accordi in essere e/o da stipularsi, di pratiche commerciali con clienti/concorrenti/fornitori, o degli argomenti che saranno trattati nell’ambito di un’associazione di categoria è fatto obbligo di contattare preventivamente il Presidio Antitrust.

4.2.3 Abuse of dominant position

L’art. 102 del TFUE e l’art. 3 della L. 287/90 vietano alle imprese che detengano una posizione dominante sul mercato o su una parte sostanziale dello stesso di sfruttare abusivamente tale posizione a danno della concorrenza.

A differenza del divieto di intese restrittive that the Antitrust Watchdog be contacted in advance.

4.2.3 Abuse of dominant position

Article 102 of the TFEU and Article 3 of Law 287/90 prohibit businesses that hold a dominant position on the market or on a substantial portion thereof from abusing such position to the detriment of competition.

Therefore, unlike the prohibition against restrictive arrangements, this rule applies to unilateral conduct adopted by a business.

To assess whether given unilateral conduct violates these rules it is appropriate, first of all, to check whether the business involved holds a dominant position. “Dominant position” is understood to mean a situation of economic power that enables a business to impede effective competition on the significant
market and to behave independently from its competitors, suppliers, customers and consumers. Such a position arises from a combination of several concrete factors (for example, market share held, barriers to entry, etc.) that, considered individually, are not necessarily determinative.

A dominant position in a given market may also be held jointly by several businesses (“collective dominance”), when two or more businesses, although independent, are linked by economic ties that are so close that they adopt a shared policy and are perceived by competitors and customers as a single business in a dominant position.

Whether or not a dominant position exists on a given geographical and product market must be ascertained from time to time according to the specific factual circumstances surrounding supposedly unlawful conduct. In this regard, the market share held by the business involved is a significant index (usually a market share above 40% indicates a dominant position), but this is not the only element to be taken into account, given that leverage is present that allows a business to behave independently of its suppliers or customers even in the absence of a particularly high market share.

Antitrust law does not prohibit the existence of a dominant position in and of itself or the lawful pursuit of its own commercial interests by a business in a dominant position, but only the abuse of the “privileged” position or the committing of abusive conduct. In this regard it may be noted that a business in a dominant position has a “special responsibility” in relation to other players on the market, and therefore conduct that is perfectly lawful if adopted by a small player may, on the contrary, constitute an
antitrust violation if committed by a business in a dominant position.

In order for abusive conduct to be unlawful it need not necessarily occur in the market where the business holds its dominant position, but in some cases it may even arise in a different market, more specifically, in all markets that are in some way related to the one where the business proves to be dominant.

Cases of abuse of dominant position are usually distinguished as:
- "exploitative" abuses: abusive acts to the detriment of customers or suppliers, for example asking for an unjustifiably high price for an indispensable raw material in order to maximise one's own profits, or
- "exclusionary" abuses: consisting of unlawful acts to the detriment of competitors, such as unlawful conduct aimed at excluding one's own competitor from the market.

In this regard it should be noted that the configurations of abusive conduct listed in the pertinent rules are set forth merely as examples and not as an exhaustive list. Indeed, the prohibition against abuse of dominant position is an “open” provision, that is, a general prohibition against conduct that displays certain characteristics. Here, therefore, it is not possible to provide an exhaustive and clear list of what may be deemed abusive conduct. Again, this amounts to an assessment to be conducted on a case-by-case basis according to the actual circumstances.

In light of the above, one can nevertheless detect abuse of a dominant position in any factual context that cumulatively displays the following characteristics:
- the existence of a dominant position;
presentino determinate caratteristiche. Non è dunque possibile fornire in questa sede un elenco certo ed esaustivo di quelle che possono essere considerate condotte abusive. Nuovamente, si tratta di una valutazione da condursi caso per caso secondo le concrete circostanze.

Alla luce di quanto sopra si può comunque definire abuso di posizione dominante qualunque fattispecie concreta che presenti cumulativamente le seguenti caratteristiche:
- l’esistenza di una posizione dominante;
- l’utilizzo abusivo di tale vantaggio competitivo;
- la restrizione attuale o potenziale della concorrenza;
- nel caso della norma comunitaria è ulteriormente necessario il ricorrere di un pregiudizio al commercio tra gli stati membri.

La nozione di abuso di posizione dominante ha poi natura oggettiva: si avrà dunque un illecito laddove ricorrano gli elementi sopra elencati a prescindere dalle intenzioni dell’impresa che ha posto in essere la condotta illecita, ovvero indipendentemente dalla presenza di dolo o colpa dell’impresa nell’adozione della condotta incriminata.

La condotta adottata deve avere l’effetto attuale o potenziale di restringere o falsare la concorrenza, ad esempio determinando condizioni commerciali diverse da quelle che si avrebbero in assenza dell’abuso (prezzi più alti, condizioni più sfavorevoli) o comportando un danno concorrenziale a danno di un competitor che alla lunga sarà forzato ad uscire dal mercato.

Perché l’abuso abbia rilievo sovra-nazionale e sia dunque applicabile la legge e la giurisdizione comunitaria, l’art. 102 TFEU richiede ulteriormente il pregiudizio al commercio tra gli

- the abusive use of such competitive advantage;
- an actual or potential restriction of competition;
- in the case of European rules, it is furthermore necessary to find a detriment to trade between Member States.

Thus, the concept of abuse of dominant position is objective in nature: an offence is committed whenever the elements listed above are present, regardless of the intentions of the business that has committed the unlawful conduct, that is, regardless of the presence of malice or fault on the part of such business in its committing the offending conduct.

The conduct adopted must have the current or potential effect of restricting or distorting competition, for example, certain commercial terms differ from those that would exist in the absence of abuse (higher prices, more unfavourable terms) or that lead to a competitive detriment suffered by a competitor who ultimately will be forced to exit the market.

In order for the abuse to have a transnational context and, therefore, in order for European law and jurisdiction to apply, Article 102 of the TFEU further requires harm to trade between Member States, an element that has been interpreted quite broadly by European case law and that therefore is already integrated by the mere fact that the abuse concerns a product that is also marketed in other Member States.

Unlike the prohibition against arrangements that restrict competition, the regime on preventing abuse of dominant position, whether on a national or European level, does not provide for any possibility of exemption from the ban.
In relation to the Snam Group, it should be stressed that mere compliance with the regulations on a given market does not provide protection from the prohibition against abusing a dominant position. Domestic and European case law has long emphasised that adhering to the regulations in an industry and even approval from the regulatory authorities for certain aspects of commercial conduct by a business (such as rate charges) do not prevent scrutiny of the conduct of the business involved in light of the rule against abusing a dominant position.

Even having strictly adhered to the regulations, a business in a dominant position still has to make a further effort because of the special responsibility to the market in which it is established through its privileged competitive position.

This principle does not violate the legitimate expectation of reliance on the part of the business, as consent from a regulatory authority cannot be used to justify violations in all other legal areas not assessed by that authority, nor as an excuse or extenuating circumstance eliminating the subjective element of a violation that, as indicated, remains undetected.

The following list includes examples of the instances of abuse that are most widespread and recognised in the case law and in the practice of the competition authorities.

- Unjustified refusal to allow access to essential infrastructure (that is, infrastructure indispensable to the economic activities of competitors on the downstream market and that cannot be duplicated, such as a gas pipeline, a rail network or pervasive telecommunications spread out over the territory) or the offering of different terms
to different customers for access to the infrastructure.
- Unjustified refusal to supply or continue to supply a raw material or intermediate product required by one’s own customers or by competitors in order to compete in one or more downstream markets (“refusal to deal” or “refusal to supply”), or unjustifiably offering different terms to customers.
- Giving suppliers excessively low purchase prices or other unfair terms or performance.
- Offering excessive prices or other unfair terms in the sale of a product or service.
- Discount policy that has the purpose or effect of preventing customers from obtaining their supplies from another supplier, equivalent to an exclusive supply clause imposed by the supplier.
- Offering the upstream market prices for raw materials or intermediate products that are sufficiently high or unfavourable as to not allow its own competitors in the downstream market to be competitive (“margin squeeze”).
- Offering predatory prices, or prices below cost, to provoke the exiting of a competitor from the market, and then raising the prices to a level higher than competitive pricing (exclusionary abuse followed by exploitation abuse).

In the geographic markets that are of interest to the Snam Group, many of the classic cases listed above are hard to apply.

However, as explained, the regulations in the industry cannot be used as a shield against allegations of abusive conduct and it is possible that there are still areas of discretion in the implementation of the regulations that may give rise to suspicions of abusive conduct.

In addition, the regulated natural gas business
markets are characterised by very particular elements that may lead the Antitrust Authorities to identify entirely new characteristic cases of abuse. Consider, for example, cases where the Commission, with specific reference to the natural gas transportation market, has indicated a circumstance of possible abuse in the manner of deciding on and managing improvement projects, citing a requirement for owners of essential infrastructure to invest in the improvement of the infrastructure itself, even if there have not yet been any clear, unambiguous instructions along this line.

4.2.4 Abuse of economic dependence

Even where the circumstance of a dominant position does not arise, certain conduct adopted by a business in relation to its customers or suppliers may be considered abusive in light of the rules on abuse of economic dependence (Law 192 of 18 June 1998). In this respect, Article 9 of Law 192/1998 provides for a ban on conduct by a business that, although not holding a dominant position on the relevant market, abuses the economic power that it enjoys in vertical relationships with businesses that are customers or suppliers.

The prohibition applies to conduct relating to commercial relationships with suppliers or customers, regardless of any detrimental or restrictive effect on competition. Under this rule, therefore, the conduct is unlawful if:

- it represents abusive conduct by a business that enjoys economic strength to the detriment of a business that is a customer or supplier that is in a state of economic dependence; and
- it is part of a contractual relationship (already in place or in progress).

Nei mercati geografici di interesse del Gruppo Snam, molte delle fattispecie classiche sopra elencate trovano difficilmente applicazione.

Tuttavia, come illustrato, la regolamentazione di settore non pone al riparo da accuse di condotte abusive ed è possibile che vi siano comunque spazi di discrezionalità nell’attuazione della regolamentazione che possono dare adito a sospetti di comportamenti abusivi.

Inoltre, i mercati delle attività regolate del gas naturale sono contraddistinti da elementi del tutto peculiari che possono condurre le Autorità Antitrust ad individuare fattispecie abusive del tutto nuove e caratteristiche. Si pensi ad esempio ai casi in cui la Commissione, con specifico riferimento al mercato del trasporto del gas naturale, ha indicato un profilo di possibile abuso nelle modalità di decisione e gestione dei progetti di potenziamento, adducendo un obbligo per i possessori di una infrastruttura essenziale a investire nel potenziamento della medesima, seppure in tal senso non vi siano ancora indicazioni chiare e univoche.

4.2.4 Abuso di dipendenza economica

Anche laddove non ricorra il presupposto della posizione dominante, alcune condotte adottate dall’impresa con i suoi clienti o fornitori possono essere considerate abusive alla luce della normativa in materia di abuso di dipendenza economica (Legge 18 giugno 1998, n. 192). A questo riguardo l’art. 9 della Legge 192/1998 prevede un divieto per quelle condotte poste in
If these prerequisites are fulfilled, it is prohibited to interrupt a commercial relationship with the customer or supplier in an arbitrary manner, or for the purpose of harming a business in a position of economic dependence. In the case of a commercial relationship where one of the contracting parties is in a circumstance of economic dependence, an eventual withdrawal from the contract by the other party therefore presents quite a delicate situation that should be evaluated and handled carefully.

The Snam Group’s position in several geographical markets could be assessed by the Antitrust Authorities as dominant or a position of strength with respect to a supplier or customer in a position of economic dependence. For this reason it is essential to use particular caution in adopting conduct toward customers or competitors.

It is noted that given conduct may be lawful if adopted by non-dominant businesses, but may but unlawful if adopted by a business in a dominant position.

In order to ensure proper compliance with antitrust law on the part of the Snam Group, Snam people must submit to the Antitrust Watchdog any circumstance of potential concern regarding the rules on abuse of dominant position and abuse of economic dependence.

4.2.5 Concentrations between businesses

Pursuant to Regulation (EC) No 139/2004 and Article 6 of Law 287/90, some transactions between businesses must be notified to the competent Antitrust Authorities to allow preventive control to safeguard the preservation of a balanced market structure and effective competition.

Along this line, the control of concentrations
Snam constitutes a supplement to and, to some extent, a preventive measure for the penalising powers attributed to the Antitrust Authorities in combating violations of antitrust law. The preventive control of concentrations is in fact designed to prevent acquisitions, mergers and spin-offs from becoming an excessive concentration of the market or a substantial part of it, particularly through the creation or strengthening of dominant positions.

To guarantee an effective and timely control for the protection of the competitive structure of the markets, the following transactions must be reported before they can be carried out:
- those creating a “concentration between businesses” within the meaning of antitrust law; and
- those where the businesses involved exceed a given turnover threshold (on a domestic and European level).

In tal senso la disciplina sul controllo delle concentrazioni costituisce il complemento e in qualche modo una misura preventiva rispetto ai poteri sanzionatori attribuiti alle autorità antitrust per la repressione delle violazioni del diritto antitrust. Il controllo preventivo sulle operazioni di concentrazione è infatti volto ad evitare che attraverso acquisizioni, fusioni e scissioni si determini una eccessiva concentrazione del mercato o in una parte sostanziale di esso, in particolare attraverso la creazione o il rafforzamento di posizioni dominanti.

The concept of “concentration” varies, in part depending on whether the applicable law is domestic or European, but in any event it covers all transactions that cause a lasting change of control (de jure or de facto) of the businesses involved, for example:
- the creation of a joint venture;
- the acquisition of a business;
- the acquisition of lines of business, property or assets to which revenue can be clearly attributed;
- a merger of independent businesses;
- the transformation of a company under joint control to sole control and vice versa.

When the transaction is a concentration subject to reporting and the turnover thresholds provided for under Italian or European rules are exceeded, the notification requirement must be fulfilled before the transaction takes place and after the pertinent agreement is entered into.
25 Codice di condotta antitrust / Antitrust code of conduct

Fino all’emanazione dell’autorizzazione da parte dell’autorità competente le parti sono soggette ad un obbligo di standstill, ovvero un divieto di implementazione dell’operazione di concentrazione.

La violazione dell’obbligo di notifica o dell’obbligo di standstill può comportare:
- l’irrogazione di sanzioni da parte dell’autorità competente;
- l’obbligo di «scomporre» la concentrazione laddove essa sia stata realizzata in violazione dell’obbligo di standstill e venga successivamente dichiarata incompatibile con il mercato comune.

4.2.6 Unfair commercial practices

Articles 18 to 27 of Legislative Decree 206 of 6 September 2005 (the “Consumer Code”) prohibit businesses from adopting unfair commercial practices and are aimed at protecting consumers.

Unfair commercial practices are defined as commercial practices that:
- are contrary to professional diligence; and
- are likely to distort the commercial choices of the average consumer whom they reach or to whom they are directed.

In particular, the Consumer Code distinguishes between two types of unfair commercial practices:
- “misleading” practices (acts or omissions): commercial practices that induce the consumers to take decisions that they would not have taken if they had been properly informed;

Until issuance of the authorisation by the competent authority, the parties are subject to a required standstill, in other words a ban on implementing the concentration transaction.

Violation of the notification or standstill requirement may result in:
- the imposition of penalties by the competent authority;
- the obligation to “break apart” the concentration if implemented in breach of the standstill and subsequently declared incompatible with the shared market.

In order to ensure proper antitrust law compliance on the part of the Snam Group, before starting negotiations Snam people should contact the Antitrust Watchdog to determine whether the transaction constitutes a concentration subject to reporting and to which the Antitrust Authority or Authorities pertain.

La nozione di "concentrazione", varia in parte a seconda che la legge applicabile sia quella nazionale o comunitaria, ma copre in ogni caso tutte le operazioni che producono una modifica duratura del controllo (di diritto o di fatto) delle imprese interessate, quali ad esempio:
- la creazione di una joint-venture;
- l’acquisizione di un’impresa;
- l’acquisizione di rami d’azienda, beni o asset, cui si possa chiaramente ricondurre un fatturato;
- fusione di imprese indipendenti;
- passaggio di una società da una situazione di controllo congiunto ad una di controllo esclusivo e viceversa.

Laddove l’operazione sia una concentrazione notificabile e siano superate le soglie di fatturato determinate soglie di fatturato (a livello nazionale e comunitario).

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- fusione di imprese indipendenti;
- passaggio di una società da una situazione di controllo congiunto ad una di controllo esclusivo e viceversa.

Laddove l’operazione sia una concentrazione notificabile e siano superate le soglie di fatturato previste dalle norme italiane o comunitarie, l’obbligo di notifica deve essere adempiuto prima della realizzazione dell’operazione e dopo la conclusione del relativo accordo.

La violazione dell’obbligo di notifica o dell’obbligo di standstill può comportare:
- l’irrogazione di sanzioni da parte dell’autorità competente;
- l’obbligo di «scomporre» la concentrazione laddove essa sia stata realizzata in violazione dell’obbligo di standstill e venga successivamente dichiarata incompatibile con il mercato comune.

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- fusione di imprese indipendenti;
- passaggio di una società da una situazione di controllo congiunto ad una di controllo esclusivo e viceversa.

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- l’irrogazione di sanzioni da parte dell’autorità competente;
- l’obbligo di «scomporre» la concentrazione laddove essa sia stata realizzata in violazione dell’obbligo di standstill e venga successivamente dichiarata incompatibile con il mercato comune.
Al fine di assicurare la corretta *compliance* del Gruppo Snam con il Diritto antitrust, prima di iniziare le negoziazioni, le Persone di Snam devono contattare il Presidio Antitrust per determinare se l’operazione costituisce una concentrazione notificabile e quale sia o siano le autorità antitrust competenti.

4.2.6 Pratiche commerciali scorrette

Si definiscono pratiche commerciali scorrette tutte quelle pratiche commerciali che:
- siano contrarie alla diligenza professionale; e
- siano idonee a falsare le scelte commerciali del consumatore medio che essa raggiunga o al quale sia diretta.

In particolare, il Codice del Consumo distingue tra due tipologie di pratiche commerciali scorrette:
- le pratiche (azioni od omissioni) c.d. “ingannevoli”: pratiche commerciali che inducono il consumatore ad assumere decisioni che non avrebbe preso qualora fosse stato correttamente informato;
- le pratiche (azioni od omissioni) c.d. “aggressive”: pratiche commerciali che, mediante molestie, coercizione o altre forme di indebito condizionamento, inducono il consumatore ad assumere decisioni di natura commerciale che altrimenti non avrebbe assunto.

La violazione della normativa in materia, oltre a integrare un atto illecito che può essere fatto valere in giudizio dai consumatori danneggiati

- “aggressive” practices (acts or omissions): commercial practices that, by harassment, coercion or other forms of undue influence, induce consumers to take commercial decisions that they would not have taken otherwise.

A violation of the rules on this subject, in addition to amounting to an unlawful act that may be invoked in court by harmed consumers against the businesses responsible, with the pertinent right to compensation of damages, may result in the imposition of fines by the AGCM of up to €500,000 per individual violation found.

The rules on unfair commercial practices are, therefore, of fundamental importance to all businesses whose products or services are directed toward consumers or have some direct link with consumers.

From the Snam Group’s point of view, it has not yet been possible to determine functions or activities to which the rules on unfair commercial practices may be applicable, as the services provided by the Snam Group are not directed toward consumers and do not involve direct contact with them.

However, this assessment will have to be periodically reviewed and considered in light of future developments in the regulations and activities of the Snam Group.
nei confronti delle imprese responsabili con conseguente diritto al risarcimento del danno, può comportare l’irrogazione da parte dell’AGCM di sanzioni pecuniarie sino ad un importo pari a € 500.000 per ogni singola violazione accertata.

La disciplina delle pratiche commerciali scorrette è, quindi, di fondamentale importanza per tutte le imprese i cui prodotti o servizi si rivolgano ai consumatori o che con questi ultimi i abbiano comunque rapporti diretti.

Dal punto di vista del Gruppo Snam non appare ad oggi possibile enucleare funzioni o attività nell’ambito delle quali sia possibile l’applicazione della disciplina sulle pratiche commerciali scorrette, in quanto i servizi forniti dal Gruppo Snam non si rivolgono né comportano contatti diretti con i consumatori. Tale valutazione dovrà tuttavia essere periodicamente rivista e verificata alla luce delle future evoluzioni della regolamentazione e delle attività del Gruppo Snam.

4.3 Norme di comportamento con le autorità garanti nazionale e comunitaria

Le Autorità Antitrust vigilano sulla corretta attuazione e sul rispetto della normativa comunitaria e nazionale in materia antitrust, entrambe applicabili alle società del Gruppo Snam.

Al fine di consentire un efficace espletamento del loro compito le Autorità Antitrust sono dotate di poteri ispettivi e sanzionatori volti all’individuazione e condanna di pratiche restrittive della concorrenza, nonché della facoltà di avviare e svolgere indagini conoscitive.

4.3 Rules of conduct with the domestic and European competition authorities

Antitrust Authorities oversee proper implementation of and compliance with domestic and European antitrust rules, and both are applicable to Snam Group companies.

For the effective performance of their duties, Antitrust Authorities are availed of powers of inspection and sanctions, aimed at identifying and punishing practices that restrict competition, along with the power to initiate and carry out surveys of a general nature relating to economic sectors where impediments to competition are presumed to exist.

The Snam Group’s policy is based on the most ample cooperation with Antitrust Authorities as part of its overall commitment to compliance with antitrust rules and their proper implementation in the activities of the group.

4.4 Powers of inspection and requests for information

To verify that violations of antitrust rules are not occurring and have not occurred, Antitrust Authorities have the power to seek and weigh evidence of potential or suspected violations.

In particular, they have the power to:
- inspect the premises of the company involved, without prior notice;
- examine the company’s books and any other company information;
- obtain copies of all documents pertaining to the subject of investigation;
- formally question company employees in the course of an inspection, demanding immediate explanations on facts or documents relevant to the subject of investigation;
- inspect other premises, including the homes
di natura generale, relative a settori economici nei quali si presume l’esistenza di impedimenti alla concorrenza.

La politica del Gruppo Snam è basata sulla più ampia collaborazione con le Autorità Antitrust nel quadro del globale impegno al rispetto della normativa antitrust e alla sua corretta attuazione nelle attività del gruppo.

4.4 Poteri ispettivi e richieste di informazioni

Le Autorità Antitrust, per verificare che non siano in corso o non siano state commesse violazioni della normativa antitrust, hanno il potere di ispezionare e vagliare prove delle potenziali o sospette violazioni.

In particolare, hanno il potere di:

- ispezionare i locali della società interessata senza preavviso;
- esaminare i libri sociali e qualunque altra informazione della società;
- ottenere copie di tutta la documentazione pertinente all’oggetto dell’indagine;
- interrogare formalmente i dipendenti della società, nel corso di una ispezione, chiedendo immediate spiegazioni in merito a fatti o documenti pertinenti all’oggetto delle indagini;
- ispezionare altri locali, incluse le abitazioni di amministratori e dipendenti della società;
- formulare richieste scritte di informazione all’interno di procedimenti avviati su intese, abusi o concentrazioni o nell’ambito di indagini conoscitive.

4.5 Inspections

An inspection is an unannounced visit by an Antitrust Authority, accompanied by police (as a rule, by the Financial Police specialised unit). Inspections (“down raids”) usually follow a “leniency application” (request for favourable treatment) or a report filed by, for example, a competitor or customer.

First of all, it should be noted that inspections do not necessarily imply that the company is involved in or responsible for an antitrust violation. It is only an investigative activity to gather information as to the existence of possible violations. Once again, therefore, the cooperativeness and readiness that inspire the Snam Group’s conduct constitute the best response for an effective and rapid completion of such operations, as well as best demonstrating an absence of violations.

The following may be subjected to inspection:
- company establishments or business vehicles;
- any other establishment, office or vehicle in which pertinent documents may be kept.

Only if the inspection is conducted by the Commission, and there is an order issued by an Italian court, can the private homes of managers and other employees also be subjected to inspection.

During the inspection, representatives of Antitrust Authorities may access all offices.
4.5 Ispezioni

L’ispezione è una visita non preannunciata da parte di un’Autorità Antitrust, accompagnata dalle forze dell’ordine (di norma, dal nucleo specializzato della Guardia di Finanza). Le ispezioni (c.d. down raids) solitamente seguono a una “leniency application” (richiesta di trattamento favorevole) o a una segnalazione da parte ad es. di un concorrente o cliente.

Occorre innanzitutto ricordare che le ispezioni non implicano necessariamente che l’azienda sia coinvolta o responsabile di un illecito concorrenziale. Si tratta esclusivamente di un’attività investigativa volta a raccogliere informazioni sull’esistenza di possibili violazioni. Nuovamente dunque la collaborazione e disponibilità cui il Gruppo Snam ispira la sua condotta costituiscono la miglior risposta per un efficace e rapido espletamento delle operazioni nonché per la dimostrazione dell’assenza di violazioni.

Possono essere oggetto di ispezione:
- le sedi della società o i mezzi di trasporto aziendali;
- ogni altra sede, ufficio o mezzo di trasporto in cui possano essere conservati i documenti rilevanti.

Solo nel caso in cui l’ispezione sia condotta dalla Commissione e vi sia un mandato emanato da un Tribunale italiano, potranno essere oggetto di ispezione anche il domicilio privato di manager e altri dipendenti.

Durante l’ispezione, i funzionari delle Autorità Antitrust possono avere accesso a tutti gli uffici e alla documentazione cartacea o elettronica di loro interesse (ovvero pertinente all’oggetto dell’indagine), estrarre copia della suddetta

and paper or electronic documents of interest to them (that is, pertinent to the subject of investigation), make copies of such documentation, question employees, making a record of the questions and answers, and place seals on the establishment inspected or in particular areas thereof.

The only limits on powers of inspection and on access rights for the representatives are legal privilege and the prohibition against self-incrimination. The principle of legal privilege confers a right to the inspected business not to allow access to correspondence between the business and its outside legal counsel, nor to documentation provided by the latter; this exception does not, however, cover any communication between employees and inside counsel. Regarding the prohibition against self-incrimination, this means that Antitrust Authority representatives cannot pose oral or written questions that entail an admission of a violation of antitrust rules.

When a company in the Snam Group is inspected, Snam people must comply with the rules of conduct set forth below.

When the Antitrust Authority representatives and police arrive, the following is to take place:
- the Antitrust Watchdog is to be contacted immediately, to coordinate the activities involved in the inspection;
- the identities of the inspectors and the records that authorise them to do the inspection are to be checked, obtaining a copy of all documentation exhibited. In particular, the scope, purpose and subjects of the inspection proceeding are to be checked;
- the representatives are always to be accompanied and assisted by legal counsel for the Antitrust Watchdog or other Snam people.
In no event are Snam people to hinder or delay the operations of the representatives, or attempt to conceal, modify, delete or destroy documents during the inspection. Such behaviour, in addition to being contrary to the policy of the Snam Group with regard to cooperation with Antitrust Authorities, constitutes a violation that could result in the imposing of significant fines against the Snam Group.

During the inspection, Snam people must:
- allow inspectors access to all documentation (paper or electronic) requested, provided that it is relevant to the subject of inspection, thus opposing any eventual batch copying of an entire hard disk or electronic mailboxes;
- oppose access to and copying of correspondence with outside counsel or of documents of inside counsel that make reference to opinions received from outside counsel, and stamp as “confidential” the documents containing confidential information;
- ensure that the original documents are kept and that the representatives are only given copies;
- keep a second copy, for the Antitrust Watchdog, of all documentation taken by the representatives;
- draw up a precise list of all copied documents and a comprehensive list of all keywords used by the representatives in searching on electronic media;
- respond in a timely and complete manner to requests and questions from the representatives, provided that they are relevant and are not of such nature as to induce a self-incriminating answer, unless reserving the right to respond later in writing if an oral answer is likely to be approximate or incorrect;
- take note of the individuals questioned by

All the above described situations will be checked by the Antitrust Watchdog, and the Snam Group will be informed in due course.

In no event are Snam people to hinder or delay the operations of the representatives, or attempt to conceal, modify, delete or destroy documents during the inspection. Such behaviour, in addition to being contrary to the policy of the Snam Group with regard to cooperation with Antitrust Authorities, constitutes a violation that could result in the imposing of significant fines against the Snam Group.

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At the end of the inspection it is appropriate to make sure that the record of inspection prepared by the representatives is accurate and to request copies of the record of inspection and the transcripts of the formal interviews. It will be appropriate to reiterate each request for confidentiality in relation to copied documents, in all events reserving the right to challenge the power of the representatives to copy/impound documents on the basis of legal privilege or as material for the investigation.

If the inspection lasts more than one working day, the Antitrust Watchdog and Snam people must make sure that no employee (or cleaning staff) violates the seals affixed by the representatives

4.6 Requests for information

Antitrust authorities have the power to request information and documentation both within the scope of evidence gathering for the purposes of monitoring compliance with antitrust rules or monitoring concentrations as well as for the purpose of industry surveys.

In response to the receipt of a request for information from the AGCM or the Commission, Snam people must immediately submit it to the attention of the Antitrust Watchdog and proceed, in close coordination with the latter, to collect the information requested. Upon completion, the answers are to be promptly sent – signed by an authorised signatory – to the requesting authority, in any event within the period specified in the request.

The answers provided must be truthful and
- prendre nota delle persone interrogate dai funzionari, delle domande effettuate e delle risposte fornite.

Al termine dell’ispezione occorrerà assicurarsi dell’accuratezza del verbale di ispezione redatto dai funzionari e richiedere una copia del verbale di ispezione e delle trascrizioni delle interviste formali. Reiterando ogni richiesta di confidenzialità in relazione a documenti copiati sarà opportuno riservarsi in ogni caso il diritto di contestare il potere dei funzionari di copiare/sequestrare documenti in base al legal privilege o all’oggetto dell’istruttoria.

Laddove l’ispezione abbia una durata superiore ad una giornata lavorativa, il Presidio Antitrust e le Persone di Snam dovranno assicurarsi che nessun dipendente (o staff delle pulizie) violi i sigilli apposti dai funzionari.

4.6 Le richieste di informazioni

Le Autorità Antitrust hanno il potere di richiedere informazioni e documentazione sia nell’ambito delle istruttorie finalizzate al controllo sul rispetto della normativa antitrust o del controllo delle concentrazioni, sia nell’ambito delle indagini conoscitive di settore.

A fronte della ricezione di una richiesta di informazioni da parte dell’AGCM o della Commissione, le Persone di Snam dovranno sottoporla immediatamente all’attenzione del Presidio Antitrust e provvedere, in stretto coordinamento con quest’ultimo, alla raccolta delle informazioni richieste. All’esito, le risposte dovranno essere inoltrate tempestivamente all’autorità richiedente ed in ogni caso entro il termine stabilito nella richiesta stessa, a firma del procuratore abilitato.

4.7 Preparation of corporate documents and internal and external communications

Carelessness in the language used in the preparation of corporate documents or external or internal communications of a commercial nature can constitute an element of risk because it can create the false impression that violations of antitrust rules are in progress or are being planned.

In this regard it is important to remember, as described above, that during an inspection the representatives have full access to all the documents of the company and the e-mail boxes of all employees. Thus it is essential to ensure that in the event of an investigation by Antitrust Authorities, the language used in the writings of employees is not of such nature as to give rise to doubts or ambiguities that would make it appear that conduct or events are unlawful when, in fact, they are not.

In order to avoid this risk, in the preparation of any document, e-mail, presentation or communication, whether internal or external, Snam people must adhere to the following principles:

- avoid using ambiguous language in documents that contain information about competitors or that are commercially sensitive, if possible mentioning the lawful source of such information;
- consider any draft document as if it were to enter the public domain and, in every case, as
Le risposte fornite dovranno essere veritiere e complete. Un comportamento non conforme a tali principi, oltre ad essere in contrasto con la politica del Gruppo Snam riguardo alla collaborazione con le Autorità, costituirrebbe una violazione tale da comportare l’irrogazione di sanzioni pecuniarie a carico del Gruppo Snam.

4.7 La redazione di documentazione aziendale e delle comunicazioni interne ed esterne

La mancata attenzione in merito alle espressioni linguistiche utilizzate nella redazione della documentazione aziendale o di comunicazioni interne od esterne anche di natura commerciale può costituire un elemento di rischio in quanto può creare la falsa impressione che siano in corso o vengano pianificate violazioni della normativa antitrust.

A questo riguardo è importante ricordare, come illustrato sopra, che i funzionari nel corso di un’ispezione hanno accesso completo a tutta la documentazione della società e alle caselle email di tutti i dipendenti. E’ dunque indispensabile assicurare che a fronte di un’indagine delle Autorità Antitrust il linguaggio utilizzato negli scritti dai dipendenti non sia tale da ingenerare dubbi o ambiguità che facciano sembrare illecite condotte o fatti che illeciti non sono.

Al fine di evitare tale rischio, le Persone di Snam, nella redazione di qualsiasi documento, e-mail, presentazione o comunicazione, siano essi interni od esterni, dovranno attenersi ai seguenti principi:

- evitare di usare un linguaggio ambiguo nei documenti che contengono informazioni sui concorrenti o commercialmente sensibili, citando possibilmente la fonte lecita di tali informazioni;

- consider all e-mails as if they were official and public documents, bearing in mind that even if an e-mail or an electronic file is deleted, it can be traced and reproduced in an investigation or in an administrative or judicial proceeding;

- avoid speculating whether certain conduct is unlawful or not;

- avoid giving the impression that the decisions of Snam Group companies are taken for reasons other than the pursuit of company interests;

- avoid the use of expressions that may give the impression that Snam Group companies have market power sufficient to allow them to act independently of other players in the market or have leeway for avoiding regulation or antitrust rules;

- affix to all documents that make up correspondence with attorneys and to the subject line in the e-mails addressed to outside counsel the wording “Privileged and Confidential – Lawyer-Client Communication”.
considerare ogni bozza di documento come se dovesse diventare di pubblico dominio e come se fosse in ogni caso un documento definitivo;
- considerare tutte le e-mail come se fossero documenti ufficiali e pubblici, tenendo presente che anche se un e-mail o un file elettronico viene eliminato, è possibile rintracciarlo e riprodurlo nel corso di un’investigazione o di una procedura amministrativa o giudiziaria;
- evitare di speculare se una determinata condotta sia illecita o meno;
- evitare di dare l’impressione che le decisioni delle società del Gruppo Snam siano prese per ragioni diverse dal perseguimento dell’interesse aziendale;
- evitare l’utilizzo di espressioni che possano dare l’impressione che le società del Gruppo Snam abbiano un potere di mercato tale da permetterle di comportarsi in maniera indipendente rispetto agli altri operatori del mercato o che abbiano margine per eludere la regolamentazione o la normativa antitrust;
- apporre su tutti i documenti inerenti la corrispondenza con avvocati e nell’oggetto nelle e-mail rivolte agli avvocati esterni la dicitura “Privilegiato e confidenziale – Comunicazione cliente/avvocato”.

Snam
5. CONSERVAZIONE E ACCESSO ALLA DOCUMENTAZIONE

Tutta la documentazione conseguente all’applicazione della presente procedura è conservata dalle unità competenti, secondo le tempistiche previste al paragrafo 5.4 della SNAM-PRO-050 “Gestione della documentazione”.

I luoghi e/o le modalità di conservazione della suddetta documentazione devono essere idonei a garantirne integrità, reperibilità e accessibilità da parte delle funzioni aziendali competenti e/o dei Terzi autorizzati.

6. PRESIDIO ANTITRUST

Il Presidio Antitrust è istituito nell’ambito di Affari Legali, Societari e Compliance.

Legale Compliance (LECOMP) assicura lo svolgimento dei compiti del Presidio Antitrust.

Per ogni comunicazione inerente l’interpretazione e l’applicazione del Codice Antitrust, e ogni qualvolta individuino una situazione a potenziale rischio antitrust, le Persone di Snam contattano il Presidio Antitrust al seguente indirizzo mail: presidio.antitrust@snam.it

5. STORAGE AND ACCESS TO DOCUMENTS

All documentation involving the application of this procedure is to be kept by the appropriate units, in compliance with the time periods provided for in paragraph 5.4 of SNAM-PRO-050, “Document management”.

The places and/or manners of storing such documentation must be appropriate to ensure completeness, availability and accessibility by the appropriate corporate bodies and/or authorised third parties.

6. ANTITRUST WATCHDOG

An Antitrust Watchdog is to be established within the scope of Legal Affairs, Corporate and Compliance.

Legal Compliance (LECOMP) is to provide for the performance of the tasks of the Antitrust Watchdog.

For any communication regarding the interpretation and application of the Antitrust Code, and whenever a situation of potential antitrust risk is identified, Snam people are to contact the Antitrust Watchdog at the following e-mail address: presidio.antitrust@snam.it.
7. RESPONSIBILITY FOR UPDATING

All corporate units/positions involved in the process described above are responsible, to the extent of their scopes, for detecting corporate events that imply a need to adapt the procedure in reference and for reporting them to Legal Affairs, Corporate and Compliance (ALESOC).

Legal Compliance (LECOMP), in conjunction with Organisation (ORG), is to provide for the coordination of activities for updating it. ORG is to provide for finalising it and disseminating its revisions.

The positions/functions responsible for updating the annexes are indicated in paragraph 9.

8. MEMORANDUM ON REVISIONS

First issuance

9. LIST OF ANNEXES

Annex 1
“FAQ” Update as of 3 August 2012

Is it allowed to contact a competitor to discuss whether and how to align bids for participating in a tender?

No. It is noted that any agreement, even an oral one, constitutes an arrangement of an anti-competitive nature. The mere fact of discussing the components upon which the respective bids are to be based (even in the absence of a consensus on the alignment) can be considered a prohibited arrangement if the parties adopt parallel conduct even without having agreed on it.
È possibile partecipare a riunioni di associazioni di categoria?
È lecito prendere parte a riunioni di associazioni di categoria, previa verifica l’ordine del giorno non preveda la discussione su argomenti che possono generare uno scambio di informazioni commercialmente sensibili o che comportino accordi di natura anticompetitiva. In caso di dubbio sottoporre l’ordine del giorno al Presidio Antitrust prima della riunione.

Nell’ambito dell’attività quotidiana quali informazioni sui concorrenti posso utilizzare/ricevere senza incorrere in violazioni antitrust?
È possibile utilizzare informazioni di pubblico dominio (pubblicate, per esempio, dalle autorità di regolamentazione, siti internet dei concorrenti, studi di settore ecc). È oltre possibile ricevere/ utilizzare dati relativi ai concorrenti (anche nell’ambito di associazioni di categoria) purché si tratti di dati storici e/o aggregati.

È possibile discriminare un cliente rispetto a un altro?
No, se l’impresa che adotta tale comportamento è in posizione dominante. La discriminazione è generalmente considerata abusiva se è praticata nei confronti di clienti che sono in concorrenza tra loro e determina uno svantaggio competitivo per il cliente discriminato. Tuttavia, le Autorità Antitrust hanno spesso vietato come abusive le discriminazioni di prezzo, a prescindere dall’effettiva sussistenza di un conseguente svantaggio competitivo.

È consentito imporre il prezzo a fornitori?
No, se l’impresa è in posizione dominante quale acquirente dei prodotti in questione.

Costituisce un illecito antitrust il rifiuto di accesso alle infrastrutture del gas?
La proprietà e gestione di una infrastruttura del settore del gas costituisce di per sé una posizione

Is it possible to participate in trade association meetings?
It is permitted to take part in the meetings of trade associations, after checking that the agenda does not envision discussion on topics that may generate an exchange of commercially sensitive information or that involve agreements that are anti-competitive in nature. If in doubt, submit the agenda to the Antitrust Supervisor before the meeting.

Within the scope of day-to-day activities, what information on competitors can be used or received without committing an antitrust violation?
It is possible to use information in the public domain (published, for example, by regulatory authorities, the websites of competitors, industry studies, etc.). It is also possible to receive or use data relating to competitors (even within the context of trade associations) provided that this involves historical and/or compiled data.

Is it possible to discriminate between one customer and another?
No, if the business adopting such conduct is in a dominant position. Discrimination is generally considered abusive if it is practiced against customers who are in competition with each other and if it creates a competitive disadvantage for the customer subjected to discrimination. However, antitrust authorities have often prohibited price discrimination as abusive regardless of the actual occurrence of a resulting competitive disadvantage.

Is it allowed to impose a price on suppliers?
No, if the business is in a dominant position as purchaser of the products at issue.

Does refusing access to gas infrastructures constitute an antitrust violation?
The ownership and management of gas industry
dominante. Pertanto, l’accesso non sia giustificato da una motivazione oggettiva e abbia un effetto anticompetitivo, può sussistere –oltre a una violazione della regolazione del settore– anche un illecito antitrust.

È lecito richiedere al mio fornitore di non rifornire i miei concorrenti?
Tale obbligo, anche se stabilito per mezzo di un obbligo di esclusiva o accordo sui quantitativi, può dar luogo a una violazione antitrust, in quanto impedisce al fornitore di vendere i propri prodotti ai concorrenti dell’acquirente. Il rischio di violazione è ancora più elevato laddove l’acquirente e/o il suo fornitore detengano una quota significativa nel mercato in cui operano.

Nell’ambito di una ispezione da parte delle Autorità Antitrust a quali domande vi è l’obbligo di rispondere?
L’obbligo di rispondere puntualmente e completamente ai funzionari antitrust sussiste esclusivamente nell’ambito di un’intervista formale. Se i funzionari iniziano a fare domande informalmente (fuori dal contesto di un interviista formale) è necessario limitare le risposte a semplici indicazioni procedurali. Se le domande diventano di natura sostanziale è necessario insistere affinché vengano trattate nell’ambito di una intervista formale e che siano trascritte. In tale ultimo caso è preferibile, laddove possibile, assicurarsi che possa essere presente il Presidio Antitrust.

I funzionari possono iniziare un’investigazione facendo una copia completa di un server?
I funzionari sono autorizzati a fare copia completa di un server per ragioni di prevenzione, ma non possono portare la copia fuori dalla sede o dall’ufficio ispezionato (es. quando l’ispezione continui il giorno successivo). Inoltre, l’accesso ai documenti contenuti nella copia e la copia

infrastructure in and of itself constitutes a dominant position. Therefore, if access is not justified by an objective reason and has an anticompetitive effect, besides generating a violation of industry regulations, it may also constitute an antitrust violation.

It is allowable for me to ask my supplier not to resupply my competitors?
Such a requirement, even if established by means of an obligation of exclusivity or an agreement as to quantities, may give rise to an antitrust violation as it prevents the supplier from selling its own products to competitors of the purchaser. The risk of violation is even greater when the purchaser and/or its supplier hold a significant share of the market in which they operate.

What questions are required to be answered in the context of an inspection by antitrust authorities?
The obligation to respond promptly and fully to antitrust representatives arises only within the framework of a formal interview. If the representatives start to ask questions informally (outside of the context of a formal interview) the answers must be limited to simple indications of procedural nature. If the questions become substantive in nature, one must insist that they be handled within the framework of a formal interview and that they be transcribed. In the latter case, it is preferable, where possible, to make sure that the Antitrust Supervisor can be present.

Can the representatives start an investigation by making a complete copy of a server?
The representatives are authorised to make a full copy of a server for preventive purposes,
dei medesimi dovrebbe essere consentita solo in conformità con il principio per cui l’ispezione deve essere limitata ai documenti rilevanti rispetto all’oggetto dell’ispezione e che i documenti coperti da legal privilege non possono essere parte del file dell’ispezione.

but they cannot remove the copy from the establishment or from the office inspected (for example, when the inspection continues the next day). In addition, accessing the documents contained in the copy and the copying of them are only allowed in accordance with the principle that the inspection must be limited to documents relevant to the subject of inspection and that documents covered by legal privilege cannot be included in the inspection file.