



## ANTITRUST COMPLIANCE PROGRAMME

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*“ ESD makes compliance with antitrust regulations a priority, in its conviction that this, in addition to its competitiveness on the market, will increase the technical development and innovation of consumer goods, to the full benefit of the most efficient distributors and the final consumers.”*

Enrico Fattori (General Manager)

Milan, March 8, 2018

**A WELL MANAGED JPC (JOINT PURCHASING COMPANY) CREATES A CULTURE OF ANTITRUST COMPLIANCE AND STAFF PROFESSIONALISM DESIGNED TO SERVICE ITS MEMBERS. SUCH JPCs HAVE LITTLE TROUBLE WHEN DEALING WITH ANTITRUST INVESTIGATIONS.**

American Bar Association, Antitrust and Trade Associations

## 1. Introduction.

Of business risks, antitrust risk is taking on more and more importance in today management of a company. This is increasingly the case with those industrial sectors which, right or wrong, traditionally attract the attention of the Competition Authorities – such as modern distribution or large-scale retail, a sector investigated in the recent past, also on a nationwide level (IC43).

ESD has no fear of these initiatives, in its conviction that a truly competitive market is a boon to both consumers and to companies, whether in Distribution or Industry. It is therefore committed to operating on the consumer goods procurement market independently of competing joint purchasing companies, monitoring that all precautions have been taken for information exchanges not to take place among its members that might result in collusion on the downstream markets of the resale.

This has given rise to the decision to implement a rigorous antitrust compliance Programme (which is to say compliance and conformity with the regulations and principles of competition law), addressing not so much and solely itself and its employees and directors, **but above all its partners and the principal companies when operating in the ESD context, in order to assure them of a working environment that is safe and free of critical areas.**

**The Programme constitutes the company's firm desire to comply with antitrust regulations, both in its internal dealings and in its relations with third-party companies, and its suppliers above all.**

ESD is also proud to be one of the first joint purchasing companies in Italy to show this special attention to compliance with antitrust regulations.

ESD aims to transform antitrust risk into a growth opportunity, and into the driver of increasingly better business efficiency and competitiveness for itself and for its associates.

For a company, a business culture that is attentive to and familiar with the principles of antitrust law is a priority concern; this is also in order to avoid the stiff penalties levied for unlawful conduct, which often amount to up to 10% of the company's annual turnover, regardless of whether said conduct has actually compromised competition on the market.

In fact, under antitrust law, a merely attempted offence is already punishable, an attempted cartel being, for the purposes of the penalty, equal to a highly efficient cartel for businesses sewn up by cartels. These stiff penalties compromise the companies' investment plans, taking away significant resources that would otherwise go towards development – when not imperilling the companies survival altogether.

A joint purchasing company risks being penalized not only on its autonomous turnover but on the turnover of its companies as well. This is even more serious a matter in an industry, like large-scale retail, in which, while turnovers are enormous, margins remain quite small. Therefore, breaches of antitrust regulations, especially for retailers of consumer goods that interface with millions of customers/consumers, do great harm to the company's image, and may in the end lead to seven-figure claims brought by those who believe they were victims of the alleged cartel, the companies downstream, and consumer associations that enjoy the favourable bias of courts – which, as an exception to the principles of common law and given the objective difficulty of quantifying the harm, often award very considerable damages.

The Programme is to be understood as an instrument indispensable for:

- Familiarizing all employees and directors (or representatives) of ESD, its partners, and its Principal Companies, with the basic principles of antitrust law.

- Raising awareness of how important it is for all employees and directors (or representatives) of ESD, its partners, and its Principal Companies to act in compliance with antitrust regulations.
- To make antitrust risk management activities uniform in the Company.
- To make compliance with the operating manual and the guide mandatory, under the penalty of heavy disciplinary sanctions for breaches that imperil ESD's image and financial resources. For the employees of the Principal Companies operating within ESD, they will be immediately removed from ESD's activities, with the request to the Principal Company to lay appropriate penalties on its employee.

It is the individual responsibility of each person in this Company to act in accordance with these principles, by never carrying out behaviour that may have the purpose or effect of unlawfully restricting market competition, thus causing grave harm to the company or its partners.

## 2. Objectives of the Programme.

By adopting the Programme, ESD aims:

- a) To identify risk areas in negotiating with its suppliers and in relations with its members, in order to adopt preventive measures aimed at avoiding the risk of offence and therefore of penalties;
- b) To create/strengthen the antitrust culture in the Company and in its partners and Principal Companies;
- c) To prepare clear rules of behaviour, understood and shared by employees and directors (or representatives) of ESD, its partners and the Principal Companies;
- d) To provide a simple and concise guide, in bullet points, that everyone operating in the ESD context must be supplied with. This guide will also be on display on ESD's premises to facilitate consultation;

- e) To identify situations in which antitrust law can be used to reject anti-competitive pressures/behaviour on the part of third parties (dominant companies, competitors and suppliers, requested in the association or consortium setting);
- f) To avoid the risk of being involved in compensation claims for antitrust offences;
- g) To avoid the risk of contracts voided due to the inclusion of anti-competitive clauses;
- h) To avoid the risk of negative publicity and damage to reputation for the Company, and above all for its associates.

3. Instruments and initiatives deemed necessary for implementing the Programme.

The Programme is based on the following elements to be considered essential:

- a) Management's visible commitment to implementing the Programme in the Company.  
It will always provide clear, constant, and proactive support to promoting the Programme, and to its actual implementation.
- b) ESD's visible commitment to complying with antitrust law, by publishing this document on the institutional website.
- c) Manual, Guide, and Antitrust procedures.  
ESD has prepared an antitrust Manual and operating Guide for its employees and directors (or representatives), its partners and the Principal Companies, understood as a compendium gathering all the principles of antitrust law and the operative guidelines for the employees of the company and of the subsidiaries who are most exposed to antitrust risk.

These publications will be distributed to all employees and directors (or representatives) of ESD, its partners and its Principal Companies that maintain relations with third parties in the Company's name and on its behalf.

Both the Manual and the Guide will have to describe, as basically, clearly, and concisely as possible, the purposes of the regulations, while illustrating lawful and unlawful behaviour and furnishing recommendations and advice on how to deal with potentially at-risk situations. They will provide the contacts (cell phone number and e-mail address) of the Antitrust Compliance Officer (ACO), which is to say the person at the company tasked with (i) ensuring proper implementation of the Programme, (ii) monitoring compliance with antitrust principles by the Company's employees and directors, (iii) dialoguing with all employees and directors (or representatives) of ESD, its partners and its Principal Companies who, in the performance of their activities at the company, have expressed doubts and perplexities in antitrust matters with regard to their own and third parties' doings.

ESD's General Manager Dr. Enrico Fattori, and Dr. Fabio Sordi representing the ESD Trade Committee, will be assigned within the Company to perform this delicate role, which is essential for ensuring the effectiveness of the entire antitrust risk prevention programme. All the Company's employees/partners/Principal Companies are required to immediately contact them in the event of doubt.

An outside attorney specialized in antitrust law will remain on standby to immediately assist the ACO in his tasks. In this way, the company will ensure the system is adhered to, thereby reducing antitrust risk to a minimum. The Manual and Guide will provide clear Rules and Procedures to be followed in the matter of:

- Contacts between the Company's partners;
- Contacts among Joint Purchasing Companies;
- Cooperation agreements, R&D, joint purchase/sale; and other joint commercial activities;

- Participation of the Company, its partners, or Principal Companies in other Joint Purchasing Companies or trade associations, and other consortia;
- Cooperation with antitrust authorities, also in the event of surprise inspections;
- Behaviour to be maintained and to be avoided in relations between the Company and suppliers, focusing in particular on the relations between ESD and the dominant companies on the one hand, and between ESD and SMEs on the other.

d) Antitrust Audit

Under the auspices and at the initiative of the ACO, an antitrust Audit commissioned from outside attorneys experienced in the matter will be organized at the company by no later than 12 months after the implementation of the Programme. Later, the ACO, in agreement with the ESD Board of Directors, will see to scheduling additional antitrust audits which, in the absence of particular criticalities, will be held on a three-year basis.

e) Continuous training

The Company will spread among its employees, directors, Purchasing Commission managers, their Tutors, partners, and Principal Companies, the principles of antitrust law, through an annual training day with a maximum of 20 participants to ensure its practical utility.

The ACO will organize these meetings, informing all the interested parties that attendance at these courses is obligatory. Upon justified request, one-to-one training courses at the Company's request will also be organized by the ACO.

Each new partner/principal operating at the Company, employee or director of ESD shall be required to attend an antitrust training course upon entering service/assuming office at ESD, and shall be given the Manual and Guide.

*THE GENERAL MANAGER*  
*ENRICO FATTORI.*