ANTITRUST CODE OF CONDUCT

of

Open Power Grids Association

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Introduction

Open Power Grids association (hereinafter, the "**Association**" or "**OPG**") believes in the value of free competition and in the benefits it produces for the community, including market operators themselves.

In order to clarify to all associates and members of the Association's bodies ("**Recipients**") the principles and rules laid down by the law to protect competition, to prevent the risk of possible conducts that do not comply with antitrust law and to improve the associative culture in this regard, OPG has therefore decided to adopt this Antitrust Code of Conduct ("**Code**"). OPG conforms its activities to the Code and requires its members to comply with it during the activities carried out within the association.

In particular, the Code is a **tool for prompt consultation**, which allows a first assessment regarding the conduct to adopt in order to act in compliance with antitrust law and with the values on which the Association is founded. To this end, it focuses in particular on the areas in which – in light of the specific activity carried out by OPG – there is a greater risk of antitrust infringements, also providing the Recipients with indications on the precautions to take, both to prevent the arisal of any critical issues and in the cases where such critical issues arise.

This has the purpose not only of preventing OPG and its associated companies from engaging in conduct contrary to antitrust law, but also and above all of offering all its members a safe environment in which to confront each other.

In light of the above, OPG invites the Recipients to examine the Code with the utmost attention, in order to:

- become more **familiar with the principles of antitrust law**, by identifying conduct contrary to such legislation;
- **act in accordance with the indications** provided by this Code;
- **prevent the arisal** of potentially critical situations, as well as **adequately manage** and **report** such situations.

It is mandatory to comply with the Code in order to avoid:

- **the imposition of very high fines** in the event of finding of an antitrust violation: it is sufficient to consider that – following the reform that took place with Legislative Decree 265/2021 in art. 15 of Law 287/1990 – **penalties up to 10% of the sum of the total turnovers achieved by each company globally may be imposed on business associations**;
- the risk of **civil claims for damages** by third parties who have directly or indirectly suffered prejudice due to the antitrust violation;
- the **reputational damage** that could result to the Association from the initiation of antitrust proceedings;
- the **“distraction” of human and economic resources,** necessary for the defense activity pending a possible proceeding.

Obviously, the Code can only provide an overview of the content and implications of those antitrust rules that are most important for OPG, according to the activities carried out by the Association.

Therefore, it is important, in case of doubt or in case of suspected violations of antitrust rules, to report to the people in charge of the Antitrust Compliance Program ("**Antitrust Compliance Officer**" or "**Officer**") using the following contact details.

Gianni & Origoni Law Firm - Piero Fattori; Andrea Pezza; Amelia Rastelli

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The Association guarantees the utmost confidentiality and the right to mantain anonimity regarding the reported facts, notwithstanding that – in the case of a non-anonymous report – it will not discriminate or retaliate in any way against the complainant.

1. General principles and characteristics of the Antitrust Code of Conduct

Antitrust law is based on the idea that the competitive process brings benefits to consumers, favoring the spread of better products at lower costs and at the same time allowing an efficient allocation of production resources.

On this basis, the antitrust rules – and in particular Articles 101 and 102 of the Treaty on the Functioning of the European Union and Articles 2 and 3 of Law No. 287 of 10 October 1990 (reported in the Appendix) – are mainly concerned with three categories of conduct:

In general terms, the most frequent and problematic cases can be traced back to three categories:

1. **horizontal agreements**, i.e. agreements or concerted practices between direct competitors;
2. **vertical agreements**, i.e. supply and distribution agreements with operators active upstream or downstream of the supply chain;
3. **abuses of dominant positions**, i.e. anti-competitive conduct carried out by companies with a very significant market share (generally more than 40%).

For the sake of immediacy and in order to adapt the Code to the nature, size and activities of the Association, the following pages will deal in detail only with the horizontal and vertical agreements, which are the most relevant in relation to OPG's antitrust risk. Abuse of dominant position will be the subject of a more concise description, for the sole purpose of giving complete information.

Finally, the Code will adress the subject of the significant powers of inspection that antitrust authorities have in order to prevent or fine the violation of competition rules.

2. The prohibition of restrictive agreements

Antitrust law qualifies as "agreements" behaviours that:

a. take the **form** of agreements, concerted practices, or decisions of associations of undertakings **and**

b. are capable of causing a **restriction of competition** by object (when the agreement is capable, by its very nature, to affect competition) or by effect (where the cartel – following an assessment of its impact on the market – is considered to be capable of distorting competition).

Agreements can then be divided into "**horizontal**" or "**vertical**", depending on whether they involve undertakings operating at the same level of the production or distribution chain (e.g., two or more producers of the same good or suppliers of the same service) or at different levels of the supply chain (e.g., producer and retailer).

These concepts will be explored in more detail in the following sections.

2.1. The form of the agreements

As mentioned above, agreements restricting competition can be implemented in the form of **agreements**, **concerted practices** and **decisions by undertakings or associations of undertakings**:

- "**Agreement**" means the common intention of two or more parties to adopt a certain behaviour on the market. The notion of agreement developed by the EU Commission and the Italian Competition Authority (“**ICA**”) has a very broad scope, going far beyond, for example, the civil notion of contract. Indeed, according to antitrust law, for an agreement to be reached, it is sufficient that the involved undertakings reach any form of consensus on the adoption of certain market practices, even if it’s not formalised in any way (e.g. written form) and it doesn’t produce specific legal obligations.

- The concept of "**concerted practice**", on the other hand, refers to a form of coordination between undertakings which, while not going so far as to reach a genuine agreement, is intended to establish tacit cooperation between them with the aim of avoiding the risks of competition.

- A "**decision by an association of undertakings**" means any act, even if it is not formally binding, which constitutes the expression of the will of the undertakings which are part of a collegial structure[1]. This is a rather broad notion: in order to fall under the antitrust prohibition, it

[1] The notion of "association of undertakings" relevant for antitrust purposes is quite broad and includes a wide range of cases, including trade associations, consortia, but also cooperative associations. The essential and indispensable element is the presence of a common structure, of a generally stable and permanent organization, which has the function of expressing the collective will of the partecipating companies, thus influencing their individual conduct. This means, for example, that an entity – even of a collective nature – without a coordinating

is sufficient that an act of the association induces the members to coordinate their conduct on the market, regardless of the form of the act and its binding nature for the members.

In light of what has been examined so far, the antitrust issues related to the activity of associations such as OPG can be traced back to two types:

a. In some cases, by facilitating the meeting between members, associations' activities could be used as an opportunity for the exchange of sensitive information which is useful for the definition and implementation of anticompetitive behaviours, in the form of agreements or concerted practices.

CONDUCT SANCTIONED BY THE ANTITRUST AUTHORITY

Case I808 – Gara Consip FM4 – *Accordi tra i principali operatori del facility management*

The Italian Competition Authority has fined the main companies active in the cleaning services sector for putting in place an anticompetitive agreement in violation of Article 101 TFEU.

The anticompetitive agreement concerned the Consip tender called FM4; the untertakings involved in the agreement divided the lots of the tender according to a "checkerboard" scheme, making sure that each of them was assigned the maximum number of lots that could be awarded.

The parties reached the agreement within the context of a series of meetings between direct competitors, some of which took place at Terotec, an association they were a part of: according to the ICA, the representatives of the companies involved met on the sidelines of the association's meetings to define the details of the anti-competitive agreement.

b. in other cases, the very activity of the association could risk being illict, when in the form of a decision by an association of undertakings. From this point of view, for example, the following can be relevant from an antitrust perspective:
   - the definition of strict requirements for admission to the association;
   - the adoption of certifications or quality standards;
   - the establishment of working groups whose activities promote the standardization of conducts;
   - studies, model contracts, guidelines to influence the activity of companies in specific sectors of the market, to create barriers to entry or to exclude competing companies.

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body, could not be classified as an association for antitrust purposes. The broad scope of that notion is intended to to prevent undertakings from avoiding the scope of competition rules solely because of the formal nature (other than agreements or concerted practices) of their coordination on the market.

In the ICA's decision-making practice, the decisions taken by trade associations are sometimes attributed directly to the latter, and other times to the associated companies. More specifically, the agreement was also ascribed to the association not only when the decision had been formally taken by its bodies, but also when the association had actively contributed to the agreement by providing the tools for its implementation (for example by organizing of the exchange of information or issuing circulars or press releases).

CASE EXAMINED BY THE EUROPEAN COMMISSION

Case COMP/39.416 (closed with commitments) — *Ship Classification*

With this proceeding, the European Commission assessed the treatment of third-party classification societies not belonging to the Association by the International Association of Classification Societies (IACS).

In its preliminary assessment, the Commission determined that the IACS' decisions relating to:

i. the criteria and procedures for becoming members of the association and the way in which they were applied, and
ii. the drafting of resolutions and relevant technical information and their accessibility to third parties

may have led to a restriction of competition on the relevant market for ship classification services.

Following these assessments, the association, to avoid being fined, has committed to modify:

- the admission criteria, identifying objective and transparent criteria to be applied in a uniform and non-discriminatory manner;
- the rules to participate in the technical working groups of the association, in order to make them more inclusive;
- the rules for making IACS resolutions and the relevant technical information available to the public, making them also accessible to third parties.

CASE EXAMINED BY THE EUROPEAN COMMISSION

Case AT.40511 (closed with Commitments) – *Insurance Ireland*

The European Commission has started a proceedings against an Irish trade association regarding its access conditions.

The association in question – which brings together companies active in the insurance sector – administers and identifies the conditions of access to a database which collects data relating to insurance claims. The association guaranteed access to this database only to its members, forcing those who wanted to examine its contents to undergo an arbitrary admission process.

In light of the above, according to the Commission, the admission rules of the association could entail a significant competitive disadvantage, preventing certain entities from accessing the association itself, and therefore the database, which contains data useful for operating on the market more efficiently.

Therefore, the association had to commit to identifying objective and non-discriminatory admission criteria, and to undermine the link between access to the database and membership status.

2.2. Restriction by object and by effect

As anticipated, in order for an agreement to be considered "anticompetitive" it must have as its "object" or "effect" the restriction of competition.

Agreements that are restrictive **by object**, as mentioned, are those which, by their very nature, are intended to restrict competition. Examples of restrictions by object are:

- At **a horizontal level**, agreements aimed at:
  - **setting sales prices and other important commercial variables** (discounts, promotions, margins, etc.);
  - **coordinating production levels and the quantities to be sold:** such agreements have the same effect as a price cartel;
  - **setting the purchase prices of production inputs** (so-called *purchase cartels*) to limit the market power of sellers;
  - **market sharing and/or sharing customers**: for example, by agreeing on which customers to supply (or not to supply) or in which territory to operate (or not to operate);
  - **colluding when participating in public or private tenders** (so-called *bid rigging*): coordination may concern decisions to participate or not to participate, conditions of participation, methods of submission of bids, agreements regarding the "rotation" of

participants and, more generally, the sharing, prior to the tender, of variables capable of influencing its outcome;

- implementing **"collective boycott" strategies**, for example by agreeing with competitors to exclude a new entrant from the market or to discipline an "inconvenient" third competitor (for example, because it is particularly aggressive).

- At **<u>the vertical level</u>,** the agreements aimed at:
  - imposing **minimum resale prices** (so-called *resale price maintenance*, "RPM") through specific contractual clauses;
  - **dividing the market by territories or customer groups** (such as territorial exclusivity clauses prohibiting passive sales outside the territory).

If the agreement does not have an anti-competitive object in itself, it may still be prohibited if it is qualified as restrictive **by effect**: in this case, it will be necessary to assess its impact on the market, in light of relevant legal and economic context, as well as the nature of the goods and services involved.

In relation to the assessment of "by effect" restrictions, vertical agreements generally enjoy more favourable treatment than horizontal agreements, since, unlike the latter, they do not involve direct competitors and can lead to efficiency gains due to the synergies and complementarities of the undertakings participating in the cartel, potentially generating pro-competitive effects.

2.3. Focus: the exchange of commercially sensitive information

The exchange of information between companies can be relevant from an antitrust perspective from a twofold point of view:

- as a **method of implementing agreements and concerted practices**, where the exchange of sensitive information is the means by which the parties coordinate their respective conduct and define the content of the agreements;

- as **a stand alone anti-competitive violation.** This may be the case when sensitive information voluntarily exchanged between competing firms can anticipate each other's future behaviour.

To identify the exchanges of information that can be relevant from an antitrust point of view, it is necessary to focus on three main factors:

a. "*commercially sensitive*" nature of the **information exchanged.** In general, "*commercially sensitive*" information is: **(i)** strategic in nature; **(ii)** capable of uncovering future behaviours on the market; **(iii)** disaggregated; **(iv)** confidential (i.e. not public); **(v)** current.

In concrete terms, the following can certainly be considered sensitive:

- information that may give <u>participants in a tender a competitive advantage over their competitors</u> (e.g. information not otherwise known collected by the Contracting Stations "**CS**" regarding future calls for tenders and/or the functional specifications they intend to request in

the tenders);

- information regarding the offers that undertakings intend to submit for the tender (e.g. the actual intention to participate in the tender, the product they intend to supply to the CS, the price they intend to charge);
- the methods and contents of the response to a request from a CS / a public body, where such request has been specifically addressed to a single member of the association;
- information relating to the production costs of the products marketed by the single members of the association;
- information relating to the names of its customers (if they are not Contracting Authorities) as well as the conditions of sale of the products marketed to them;
- information relating to the production capacities of each member.

VIOLATION FINED BY THE ANTITRUST AUTHORITY

Case I820 – *Fatturazione mensile con rimodulazione tariffaria*

In 2020, the Italian Competition Authority imposed a total fine of approximately €228 million on some telecommunication operators for coordinating their commercial strategies regarding the introduction of the legal obligation to charge their fees monthly instead of every four weeks, in order to preserve the price level despite the change in the billing period, while limiting the risk of customers leaving.

In particular, according to the Authority, when the new obligation was introduced, the parties started to exchange information, also within the trade association to which they all belonged, relating to their *business plans* and to the strategies they intended to adopt in the face of the regulatory change, thus coordinating on: repricing connected to the change in the billing cycle; the methods and timing of implementation of the obligation; the right of withdrawal of customers.

The sanction, initially cancelled by the Regional Administrative Court of Lazio, was confirmed by the Council of State, which however required the Authority to redetermine its amount.

VIOLATION FINED BY THE EUROPEAN COMMISSION

Case AT.40178 – *Emissions from passenger cars*

In 2021, the European Commission imposed a total fine of €875 million on companies active in the automotive sector for concluding an agreement restricting competition by coordinating on:

- the size of the tanks for *AdBlue* (i.e. a solution used to reduce pollution generated diesel cars) and the frequency with which they need to be refilled;
- the use of a new technology in such a way as not to develop models with superior sustainability characteristics than the ones required by European legislation.

The parties exchanged technical information regading various vehicle models and in particolar, the size of their AdBlue tanks, the intervals between refills and the average consumption assumed for the EEA, thus increasing the transparency already existing on the market.

b. Characteristics of the **market** in which the anticompetitive behaviours are put in place. From this point of view, the relevant charachteristics are the degree of transparency and/or concentration of the market, as well as the possibility of significant fluctuations in supply and/or demand (or, on the contrary, a substantial stability of these fundamental variables), as well as the characteristics of the players operating in a given market (*e.g.* whether the players are similar in terms of their costs or their production capacity);

c. **characteristics of the information system**. The greater the number of operators involved and the frequency of exchanges, the greater the antitrust risk. It follows that, in principle, the collection of statistical data can be considered lawful provided that:

- participation is voluntary and open;
- the data collected are distributed in aggregated form, so that single members cannot be individually identified through the results of data processing;
- the data being exchanged are historical;
- the data cannot be broken down by geographical and product areas large enough to allow, even indirectly, the identification of individual competitors;
- the person who collects the data grants total confidentiality;
- no meetings are organized to correct the shared data or the estimates made.

When collecting, processing and sharing news, data and statistics relating to the conditions applied by member companies on the market, or to the commercial performance in specific sectors, it is appropriate to present aggregate data and to avoid that they can be used as a reference to influence the behavior of the members of the association, for example when submitting offers or in relation to calls for tenders.

VIOLATION FINED BY THE ANTITRUST AUTHORITY

Case I701 – *Vendita al dettaglio di prodotti cosmetici*

The ICA has fined several cosmetics manufacturers and their trade association for concluding an anticompetitive agreement, aimed at increasing the prices charged to large-scale distributors.

The agreement was achieved through the exchange of information regarding the main competition factors such as increases in the list prices of certain products, and the contractual conditions applied to distributors.

One of the ways in which the exchange was carried out was by disaggregating and detailing the information contained in the sector studies shared by the Association. These studies, which contained aggregated information that was not attributable to specific operators, did not in themselves represent a way to facilitate the circulation of sensitive data. However, on the occasion of associative meetings, the parties shared information aimed at disaggregating the content of the sector studies and tracing it back to single operators.

3. Abuse of a dominant position

In addition to prohibiting agreements restricting competition, the legislator (national and European) also prohibits companies from abusing their dominant position, i.e. from exploiting their market power in order to restrict competition.

In order to determine whether an undertaking is in a dominant position, it is necessary to examine whether it has significant market power and whether it is able to exercise it without competitive constraints (regarding, in particular, competitors, customers and suppliers). Out of caution, it is considered that holding a market share equal to or greater than 40% of the relevant market may be a first indicator of dominance, notwithstanding that a case-by-case verification is appropriate.

Holding a dominant position is not in itself unlawful: what is not permitted is the abusive exploitation of that position in order to restrict competition. This is because antitrust law places upon dominant undertakings a special responsibility to ensure the proper functioning of the market. As a consequence, such undertakings must not engage in behaviours that are permitted to their competitors and other rivals with less significant positions on the market.

Open Power Grids – as a trade association – does not operate directly on the market and consequently

does not exercise market power in the proper sense. However, the following paragraphs will also examine this type of conduct, on the one hand, to fulfill the educational function of the Code of Conduct, and, on the other hand, to increase the Association's sensitivity towards this kind of infringement of competition law in order to prevent OPG from facilitating its infringement by one or more of its memebers.

According to the traditional approach, abuse of dominant position can manifest itself in two forms: as an exploitative or as an exclusionary abuse.

Exploitative abuses

Exploitative abuses include all the behaviors of dominant undertakings that use their market power to the detriment of their commercial counterparts, in order to achieve excessive and over-competitive profits.

Typical **exploitative abuses** are:

- **discriminatory practices** against suppliers or customers, i.e. not granting them equal opportunities to access conditions, discounts or promotions without an objective justification for such differentiation;
- the imposition of **excessive prices**, i.e. prices that arent reasonably relatated the value of the goods or service in question.

Exclusionary abuses

A company in a dominant position has the right to compete on the market on its own merits, even in a resolute way, but it is not allowed to leverage its strenght on the market to exclude or marginalise competitors, for example by applying conditions that cannot be replicated by them, or by instrumentally hindering their permanence on the market.

The most typical cases of **exclusionary abuse** alleged against companies are:

- **predatory pricing**, i.e. setting non-remunerative prices, as a way to cause the exit of competitors from the market;
- the imposition of **exclusivity clauses** on customers, forcing them to source exclusively (or for a large majority) from the dominant company, including the recognition of loyalty rebates, which have the effect of preventing competitors from entering or remaining on the market;
- **tying** and **bundling** practices, i.e. tying separate goods or services (in relation to at least one of which the company is in a dominant position) with the aim of strengthening or extending dominance to other markets;
- the **refusal to grant access to a good or service**, if such good or service is indispensable to operate on a certain market. In particular situations, this also applies to goods which are covered by intellectual property rights.

4. Possible initiatives to mitigate the consequences of an antitrust offence

The timely detection of situations which are problematic from an antitrust point of view is essential for three reasons:

- to **prevent** that the antitrust violation is actually committed;
- if the violation has already been committed, timely action **limits the duration** and **effects of the infringement,** with repercussions on the amount of the fine and on the compensation due for any damage resulting from the offence;
- but above all, the company/association has the possibility of accessing **leniency programs** both for ongoing infringements and for those already concluded, with respect to which the Association's prompt reaction is essential.

FOCUS ON LENIENCY PROGRAMS

The participant in a cartel, still ongoing or terminated, can "self-report", communicating the existence of the cartel to Antitrust Authorities in order to obtain that the elimination (if it is the first party to contact the Authorities) or reduction of the fine(if, although it is not the first, it provides useful information regarding the antitrust violation).

In the event of the submission of such self-report, the law provides that current and former managers, directors, or other members who, by participating in the cartel, have committed crimes pursuant to art. 353, 353-bis, 354 and 501 of the Criminal Code cannot be sanctioned, provided that they actively participate in the investigations.

It is important to consider that the activity linked to antitrust compliance is itself closely linked to leniency programs since an effective compliance strategy allows companies and associations to prevent or identify anti-competitive behavior. In fact, in the event that an antitrust offence is discovered, the company/association concerned may report the infringement identified to the antitrust authority on the basis of the evidence collected thanks to the procedures set out by the compliance programmes. **The more timely and detailed the complaint, the more the reporting company is likely to obtain immunity.**

Therefore, it is important to reiterate that anyone who becomes aware of a possible violation of antitrust rules is required to report it to the Officer in order to allow the Association to choose to adhere to a leniency program.

Following receipt of the complaint, the Officer will carry out the appropriate investigations and, if it deems it appropriate, will propose to the Association to submit a request for leniency.

OPG guarantees the utmost confidentiality on the facts contained in the reports and the right to maintain anonymity, notwithstanding that – in the case of non-anonymous reporting – the Association will not discriminate or retaliate against the complainant in any way.

THE TRANSACTION PROCEDURE (c.d. *SETTLEMENT)*

Law 118/2022 introduced the settlement procedure in art. 14-quarter of Law 287/1990.

With the introduction of this procedure, the parties involved in an antitrust proceedings who acknowledge that they have breached competition rules (by abusing a dominant position or by participating in an anticompetitive agreement), will be able to benefit from a reduction of fines.

In this regard, the Authority may, within three months of the opening of the investigation and on its **own exclusive** initiative, verify the willingness of the parties to settle. In particular, if the Authority believes that the proceedings can be concluded with a settlement, it invites (in writing) the parties to express, within 15 days (or a longer term), their interest in such a solution.

In order to invite the parties to settle, the Authority must have already laid down the framework of evidence proving the infringement. It follows that, once the parties have received the Authority's invitation, they cannot expect not to be fined.

Upon successful outcome of the settlement procedure, the Authority will apply a 20% reduction in the fine, reduced to 10% in cases involving a secret cartel.

5. The investigative powers of the antitrust authorities

The Italian Competition Authority and the European Commission are responsible for supervising compliance with Italian and European antitrust law. To that end, they have broad powers of investigation against undertakings suspected of infringing competition law.

More specifically, they can:

- ➢ require companies to **provide information** on certain facts or circumstances, or to produce documents deemed relevant. This power is assisted by the provision of fines in the event that the company unreasonably refuses to provide such information, or produces false documents;
- ➢ carry out **inspections** at the headquarters of companies, also with the assistance of the Guardia di Finanza (Italian police force for financial crimes). As a rule, such investigations are carried out unannounced (so-called *dawn raids*), in order to directly view and extract copies of company documents considered relevant to the ongoing investigation, including e-mail correspondence.

What powers do officials have?

<u>Officials are entitled to</u>:

- inspect company premises, surrounding land and company cars (exceptionally, officials may also enter the **homes of managers, directors and other staff members, but only on the basis of a motivated decree issued by the public prosecutor of the place where access is to be made**);
- view and make **copies** of extracts from books and any other document related to the Association, **on any form of support**, and access all accessible information, including folders, diaries, travel documents and receipts, emails in the personal mailbox (even if the owner is not present), hard disks, as well as data contained on pen drives and other company equipment (including laptops, tablets, telephones) and this even if the documents contain confidential information;
- make use of its own software and computer forensics tools to search for relevant files present on the servers (or removed), temporarily block email accounts (including outgoing emails), disconnect PCs from the network, remove and reinstall hard disks, ask the company IT service to collaborate;
- ask to the people present on site questions relevant to the investigation, and record their answers;
- seal the rooms that will later be inspected.

<u>Officials are **NOT** entitled to</u>:

- view and take documents that are clearly <u>**NOT**</u> relevant to the investigation (as described in the inspection warrant and in the attached decision);
- view and take documents covered by legal privilege, as they relate to conversations with outside legal counsel;

- require someone to make statements on circumstances of which they have no precise memory or that they need time to reconstruct;
- access strictly personal effects or messages.

Fines and Penalties

The Association and the individuals to whom the officials could turn (employees, representatives, managers, etc.) must not hinder or slow down the Authority's investigation activity, or they will incur in fines and penalties for delay. In particular, the law provides for the following sanctions:

- **penalty for delay** for each day of delay from the request, aimed at forcing the addressee to respond to a request for information, appear at a hearing, undergo an inspection.
  - For individuals: from 150 euros to 500 euros;
  - For the Association: up to 5% of the average daily turnover achieved worldwide during the previous financial year.

- **administrative fines** in the event of obstruction of inspections, infringement of the seals put in place by the officials, incorrect or misleading answers to requests for information, unjustified failure to appear at the hearing.
  - For individuals: from 150 euros to 25.823 euros;
  - For the Association: up to 1% of the total worldwide turnover during the previous financial year.

Annex 1 – OPG Antitrust Policy

Open Power Grids – OPG believes in the value of free competition and in the benefits it produces for the community, including market operators themselves.

The Association is careful to promote a culture of compliance with antitrust law among its members and the companies they belong to. To this end, it has adopted and implemented a specific Antitrust Compliance Program, which includes a Code of Conduct that everyone must comply with.

OPG considers the following rules to be mandatory.

- OPG does not make its organizational structure available for meetings among members which are held without being formally called for, or to discusss subjects that have not been previously shared with the Association.
- OPG members are required to share only the information that is strictly necessary to pursue the Association's purposes and for the related activities (*need to know principle*);
- OPG does not share commercially sensitive information with its members – nor does it facilitate communication between members. Commercially sensitive information is defined – as clarified on page 10 of the Code of Conduct – as any information that is **(i)** strategic in nature; **(ii)** capable of uncovering future behaviours on the market; **(iii)** disaggregated; **(iv)** confidential (i.e. not public); **(v)** current.
- When sharing commercially sensitive information by Associates is strictly necessary for the pursuit of institutional purposes of OPG, the provisions of *the "Procedure for the management of Technical Committees, Intra-Associative Tables and other Association Activities*" will apply, in order to avoid any circulation of sensitive information among Members;
- The Technical Referents of the Technical Committees and the Team Leaders of the Intra-Associative Tables – assisted by the Technical Secretary – are responsible for supervising compliance with the rules established in the Code of Conduct and applying the "*Procedure for the management of Technical Committees, Intra-Associative Tables and other associative activities*".
- The members of OPG are aware that, in case of doubts about the compliance with antitrust law of initiatives to be undertaken or already undertaken, they must immediately inform the Officer (as identified on page 4 of the Code of Conduct), or they will incur in sanctions such as suspension or expulsion from OPG.
- OPG members are obliged to request the suspension of any meetings in which the discussion shofts on issues contrary to the principles expressed in the Association's Code of Conduct.

Annex 2 – Reference legislation

A) EU legislation

Treaty on the Functioning of the European Union - Part Three: Union policies and internal actions - Title VII: Common rules on competition, taxation and approximation of laws - Chapter 1: Rules on competition - Section 1: Rules applicable to undertakings - Articles 101 and 102 (ex Articles 81 and 82 TEC).

Article 101 TFEU - Agreements, decisions and concerted practices

1. The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which:

(a) directly or indirectly fix purchase or selling prices or any other trading conditions;

(b) limit or control production, markets, technical development, or investment;

(c) share markets or sources of supply;

(d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings,

- any decision or category of decisions by associations of undertakings,

- any concerted practice or category of concerted practices,

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

(a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;

(b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Article 102 TFEU – Abuse of a dominant position

Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

> *(a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;*
>
> *(b) limiting production, markets or technical development to the prejudice of consumers;*
>
> *(c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;*
>
> *(d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.*

(B) National legislation

Law no. 287 of 10 October 1990 - Rules for the protection of competition and the market

Art. 2. - Agreements restricting freedom of competition

1. Agreements and/or concerted practices between undertakings and resolutions, even if adopted pursuant to statutory or regulatory provisions, of consortia, associations of undertakings and other similar bodies shall be deemed to be agreements.

2. The following agreements are prohibited: agreements between undertakings which have as their object or effect the significant prevention, restriction or distortion of competition within the national market or in a significant part of it, including activities consisting in:

(a) directly or indirectly fixing purchase or selling prices or other contractual conditions;

(b) preventing or restricting production, market outlets or access tot he market, investments, technical development or technological progress;

c) sharing markets or sources of supply;

(d) applying, in commercial relations with other contracting parties, objectively different conditions for equivalent services, so as to give them unjustified disadvantages in competition;

(e) subjecting the conclusion of contracts subject to the acceptance by the other contracting parties of additional services which, by their nature or according to commercial usage, bear no relation to the subject-matter of the contracts.

3. Prohibited agreements shall be null and void for all purposes.

Art. 3. - Abuse of dominant position

1. The abuse by one or more undertakings of a dominant position within the national market or in a significant part of it shall be prohibited, and it shall also be prohibited:

(a) directly or indirectly impose unjustifiably burdensome purchase prices, selling prices or other contractual conditions;

(b) preventing or restricting production, market outlets or market accesaccess, technical development or technological progress, to the detriment of consumers;

(c) to apply objectively different conditions for equivalent services in commercial relations with other contracting parties, so as to place them at an unjustified competitive disadvantage;

(d) subjecting the conclusion of contracts to the acceptance by the other parties of additional services which, by their nature and according to commercial usage, have no connection with the subject-matter of the contracts.

Art. 4. - Exceptions to the prohibition of agreements restricting freedom of competition

1. The Authority may authorise for a limited period of time agreements or categories of agreements prohibited pursuant to Article 2 which give rise to improvements in the conditions of supply on the market which have effects such as to result in a substantial benefit for consumers and which are identified also taking into account the need to ensure that undertakings have the necessary competitiveness at international level and linked in particular to the increase in the production, or by the qualitative improvement of production itself or distribution or by technical or technological progress. The authorisation may not, in any event, permit restrictions which are not strictly necessary to achieve the objectives referred to in this paragraph, nor may it allow competition to be eliminated from a substantial part of the market.

2. The Authority may revoke the authorisation measure referred to in paragraph 1, subject to notice, if the person concerned abuses the authorisation or when any of the conditions for authorisation are no longer met.

3. The request for authorisation shall be submitted to the Authority, which shall avail itself of the powers of investigation referred to in Article 14 and shall take action within one hundred and twenty days of the submission of the request.

Art. 15. - Warnings and penalties

1. If, following the investigation referred to in Article 14 of this Law, the Authority finds that there has been an infringement of Articles 101 or 102 TFEU or of Articles 2 or 3 of this Law, it shall set a time limit for the undertakings and associations of undertakings concerned to eliminate the infringement or, if the infringement has already ceased, prohibit its recurrence. To this end, the Authority may require the adoption of any behavioural or structural remedy proportionate to the infringement committed and necessary to effectively bring the infringement to an end. When choosing between two equally effective remedies, the Authority opts for the least burdensome remedy for the undertaking, in line with the principle of proportionality.

1-bis. Taking into account the seriousness and duration of the infringement, it also provides for the application of an administrative fine of up to 10% of the turnover achieved by each undertaking or association of undertakings in the last financial year closed prior to the notification of the formal notice, determining the deadlines within which the undertaking must proceed with the payment of the fine. If the infringement committed by an association of undertakings concerns the activities of its members, the Authority shall impose an administrative fine of up to 10% of the sum of the total worldwide turnover achieved by each member operating on the market affected by the infringement committed by the association in the last financial year closed prior to the notification of the formal notice. However, the financial liability of each undertaking for payment of the penalty may not exceed 10% of its turnover in the last financial year ended prior to the notification of the formal notice.

1-ter. Where a penalty is imposed on an association of undertakings taking into account the turnover of its members pursuant to Articles 14(5) and 15(1a) and the association is not solvent, it shall be required to request contributions from its members up to the amount of the penalty. If those contributions have

not been paid in full to the association of undertakings within the time limit set by the Authority, the Authority may require payment of the penalty directly from any undertaking whose representatives were members of the decision-making bodies of the association when the latter took the decision constituting the infringement. If necessary to ensure full payment of the fine, after having requested payment from those undertakings, the Authority may also require payment of the amount of the penalty still due from any member of the association operating on the market where the infringement occurred. However, payment cannot be required from undertakings which prove that they did not implement the decision of the association which constituted the infringement and that they were either unaware of its existence or actively distanced themselves from it before the investigation began.

1-quarter. If, on the basis of the information available, the Authority considers that the conditions for finding an infringement are not met, the Authority may decide accordingly. Where, after informing the European Commission in accordance with Article 11(3) of Regulation (EC) No 1/2003, the Authority considers that the grounds for intervention have ceased to exist and therefore closes the investigation procedure, it shall inform the European Commission accordingly.

2. In the event of non-compliance with the warning referred to in paragraph 1, the Authority shall apply an administrative fine of up to ten per cent of turnover or, in cases where the penalty referred to in paragraph 1 has been applied, of a minimum amount of not less than twice the penalty already applied with a maximum limit of ten per cent of turnover as identified in paragraph 1, also determining the deadline within which the payment of the penalty must be made. In cases of repeated non-compliance, the Authority may order the suspension of business activities for up to thirty days.

2-bis. The Authority may impose penalties for delay on undertakings and associations of undertakings, the amount of which may be up to 5 per cent of the average daily turnover achieved worldwide during the previous business year, for each day of delay from the date set out in the decision, in order to oblige them to: (a) comply with the warning referred to in paragraph 1 of this article; b) comply with the precautionary measures adopted pursuant to Article 14-bis; c) comply with the commitments made binding by decision pursuant to Article 14-ter.

Annex 3 – Consequences in the event of a violation

In the event of violation of the rules of conduct set out in the Code, the following consequences may occur for members:

- the formal warning of the representative of the associated company by the Officer;
- the reporting of the conduct to the associated company, so that it can adopt the appropriate disciplinary measures;
- following repeated violations, or in the event of particularly serious violations, the request to the associated company to which the person belongs to replace its representative with another person within the OPG bodies.

Should the representatives of the member companies that carry out functions of guidance and coordination within the Association – such as the President and the members of the Board of Directors – or of management of operational activities – such as the Technical Secretary, the Team Leaders of the Intra-Association Tables and the Technical Referents of the Technical Committees – in the exercise of their functions violate (or in any case not apply) this Code of Conduct and the procedures that apply to them, they may suffer the following consequences:

- removal from their role and suspension or, in the most serious cases, exclusion from the associative bodies;
- reporting to the associated company, so that it can take the appropriate disciplinary measures.

Finally, in cases where the Officer finds that the violations of the representatives of the associated companies are due to the negligence of the associated company to which they belong, which has not supervised compliance with antitrust law by its representatives in OPG, the exclusion of such company from the Association may be requested pursuant to art. 10 of the Articles of Association.