Annex IX

Protocol for Compliance with Competition Standards

Approved by the Board of Directors of ACS Servicios, Comunicaciones y Energía, S.A. on 16 December 2020

Translation originally issued in Spanish and prepared in accordance with the regulatory applicable to the Group.

In the event of a discrepancy, the Spanish-language version prevails.

Contents

MODIFICATION CONTROL

VERSION	DATE	AUTHORISING BODY	AUTHOR	SUMMARY OF CHANGES
0	26 June 2019	Board of Directors	Committee for Prevention of Criminal Activities	Initial Edition
1	16 December 2020	Board of Directors	Committee for Prevention of Criminal Activities	Content Review

1 Definitions

- **ACS SCE**: ACS SERVICIOS, COMUNICACIONES Y ENERGÍA, S.A., parent company of ACS Industrial Group.
- **ACS Industrial or the organisation**: ACS Industrial Group. It includes the parent company, ACS SCE, and the several divisions[1] thereof, as well as their respective subsidiaries and temporary joint ventures where the Group companies are involved.

[1] COBRA GESTIÓN DE INFRAESTRUCTURAS, S.A.U. ("**COBRA**"); CONTROL Y MONTAJES INDUSTRIALES CYMI, S.A. ("**CYMI**"); CYMI BRASIL, S.L.U. ("**CYMI BRASIL**"); DRAGADOS OFFSHORE, S.A. ("**DRAGADOS OFFSHORE**"); ELECTRICIDAD ELEIA, S.L.U. ("**ELEIA**"); ENCLAVAMIENTOS Y SEÑALIZACIÓN FERROVIARIA, S.A.U. ("**ENYSE**"); ELECTRONIC TRAFFIC, S.A. ("**ETRA**"); IMESAPI, S.A. ("**IMESAPI**"); INITEC ENERGÍA, S.A. ("**INITEC**"); INTECSA INGENIERÍA INDUSTRIAL, S.A. ("**INTECSA**"); MAETEL INSTALACIONES Y SERVICIOS, S.A ("**MAETEL**"); MAKIBER, S.A. ("**MAKIBER**"); MANTENIMIENTO Y MONTAJES INDUSTRIALES, S.A. ("**MASA**"); SOCIEDAD ESPAÑOLA DE MONTAJES INDUSTRIALES, S.A. ("**SEMI**"); and SICE TECNOLOGÍAS Y SISTEMAS, S.A. ("**SICE**").

- **Organisation Members:** members of the board of directors, executives, employees, or temporary workers or employees or under a cooperation agreement, as well as voluntary members of an organisation and other persons under the hierarchical subordination of any of the above, of each specific company within the ACS Industrial Group.
- **ACS Code of Conduct:** Code of Conduct for ACS, ACTIVIDADES DE CONSTRUCCIÓN Y SERVICIOS, S.A.
- **Corporate Compliance Officer (CCO-RCC in Spanish)**: internal body of companies (divisions and subsidiaries) pertaining to ACS Industrial Group, awarded with autonomous powers in terms of initiative and control, entrusted, inter alia, with the responsibility to supervise the functioning and compliance with the Corporate Compliance Programme of the relevant Group company.
- **Legal Compliance Body (LCB-OCN in Spanish):** ACS SCE's internal body, awarded with autonomous power in terms of initiative and control, entrusted, inter alia, with the responsibility of supervising the functioning and compliance with ACS SCE's Corporate Compliance Programme. The existence of the LCB is an answer, inter alia, to the requirements established under Spanish criminal legislation (Section 31 of the Spanish Criminal Code) in terms of supervising the Corporate Compliance Programme.

2 Introduction

This Protocol establishes the fundamental rules that ACS Industrial employees must adhere to with regard to compliance with competition law.

The Protocol provides a general basic description of the laws and regulations protecting competition and its goal is to ensure that the business activities of ACS Industrial companies are conducted in compliance with such laws and regulations.

Likewise, the Protocol facilitates the identification of potential anti-trust behaviours by third parties and provides guidelines for action on how to proceed in view of these types of situations.

3 Scope of application

This Protocol applies to all ACS Industrial employees, regardless of their hierarchical position within the organization or professional qualification.

Particularly, it must be stated that business development, bids and procurement departments as well as local offices must be particularly sensitive as concerns compliance with these rules, ensuring compliance thereof by all employees.

Any doubts with respect to a practice that may be in conflict with competition law must be discussed with the CCO and, as appropriate, with the Legal Department. For such purposes, the Group's Ethical Channel may be used (canaletico@acsindustria.com) or, alternatively, the ACS Industrial Group company's own Ethical Channel.

4 Antitrust Law: purpose, regulatory framework and authorities in charge of application thereof

Antitrust Law aims at sustaining a market economy model where real and effective competition among companies results in an assignment that is as efficient as possible of the goods and services, which translates into lower prices, greater quality and an optimal level of technological innovation. Thus, the last goal of antitrust regulations is to safeguard the competition game, in such a way that each economic agent takes their commercial decisions independently and enterprises do not engage in agreements or practices that may supress or limit competition.

Applicable regulations within the field of antitrust law are: (i) the basic regulations of the European Union on this subject appear in Articles 101 and 102 of the Treaty on the Functioning of the European Union ("TFUE"); and (ii) nationally, in Sections 1 and 2 of Act 15/2007, of 3 July, on Antitrust Law ("LDC" in Spanish). Such provisions must be complemented by the case-made law that construes them, dictated by the Courts of the European Union and by domestic courts.

The antitrust authorities are entities in charge of ensuring fulfilment of the regulations in terms of competition, and have powers of inspection, of preparatory inquiry and sanction of conducts infringing the regulations. There are authorities at European level, at national level and, in the case of Spain, at regional level. At European level, the relevant authority is the Directorate General for Competition of the European Commission.

In Spain, the distinction can be made:

- Between competencies to act at a national level, the Comisión Nacional de los Mercados Competencia National- Commission of the Markets and Competition ("CNMC" in Spanish).
- At a regional level, the authorities with jurisdiction at the level of the Autonomous Regions (Comunidades Autónomas).

5 Risks in relations with competitors

One basic principle of competition law is that companies must determine their conduct in the market autonomously and independent of their competitors. This principle does not mean that companies are prohibited from adapting to practices they may observe in their competitors (in fact, market intelligence can be an essential aspect). However, a company's behaviour within the market is never to be agreed with competitors and strategically or commercially sensitive information must never be exchanged or received.

The primary behaviours that are prohibited are explained below.

5.1 Cartels

"Cartel" means any implied or verbal agreement in virtue of which two or more competitors agree not to compete against each other.

The term agreement is a very broad term in Antitrust Law. More precisely, the regulations do not only forbid formal agreements (contracts) but all kind of covenant, either formal or informal, oral or written. It is also applied in agreements where the concurrence of wills by the parties has not been articulated formally /for example, collusion through digital tools).

Cartels whose subject matter is:

- Establishment or coordination of prices.
- The distribution of customers, suppliers, markets or territories (such as what is known as “non-aggression pacts”).
- Not soliciting certain customers, not contracting certain suppliers (“boycotts”) or otherwise jointly hindering a third party from engaging in their business in the market.
- Exchange of sensitive information among competitors on strategic variables such as, for example, prices or future amounts.

Also considered a cartel is an agreement between competitors to coordinate their behaviour as part of a tender procedure (what is known as “fraudulent bidding” or “bid-rigging agreements”).

It must be highlighted that public bids are a competitive market, and, as such, regulations on competition are fully applicable. In this regard, there is a full set of illicit practices whose common denominator is the alteration and/or manipulation of the result of public bids. Such practices are, for example:

- Agreeing with other bidders on the terms and conditions of submitting bids or distributing contracts directly or through subcontracting, either occasionally or on an ongoing basis.
- Agreeing that certain competitors will refrain from submitting offers, or that they will make artificially high offers or offers that do not meet the requirements in the specifications of the bid, so that the contract is awarded to them (“offers of accompaniment or cover”).
- Agreeing upon any type of compensation to companies that have not been awarded the contracts, for example, by subhiring them for the partial execution of the contract.

- Refusing an invitation to present an offer or to compete when this is motivated by a distribution of markets or clients or by a compensation of a previous favour. For this reason, it is advisable to document at an internal level the economic or commercial reasons that lie behind the decision of not submitting an offer to a bid, especially when an express invitation to participate has been extended by the client.

The CNMC has identified the following factors, inter alia, as signs of the existence of an offer of cover or accompaniment[2]:

- Reduced number of bidders.
- Inconsistent offers from the same operator for similar bids.
- Suspicious similarities between offers, poor content and format.

With regard to cartels, the following must be specified:

- Agreements between competitors do not necessarily have to be the result of direct agreements between the parties. These agreements may be articulated through an intermediary such as a consultant, supplier or subcontractor used by different competitors as the means to exchange the necessary information for the cartel ("hub & spoke cartel").
- Cartels are infringements of the regulations on antitrust by definition and, therefore, there is no need for the anti-competitive agreement to have been effectively implemented or for it to have attained the expected result. A failed cartel may likewise be investigated and sanctioned by the antitrust authorities.
- Please note that a company may be considered responsible for a cartel even if it has simply adopted a passive attitude. To this end, explanations and excuses of the likes of "I was only listening to what others were saying", "I never responded to the email" or "we weren't going to compete for that tender anyway" are not accepted by the competition authorities.

[2] Guide on Public Procurement and Competition of the now extinct National Commission on Competition (in Spanish Comisión Nacional de la Competencia) (2011): https://www.cnmc.es/ambitos-de-actuacion/promocion-de-la-competencia/contratacion-publica

- Therefore, if there are any suspicions that an ACS Industrial company may be directly or indirectly participating in a cartel, the CCO must be immediately informed in order to avoid any possible risk of infringements and adopt the appropriate measures.
- The fact that the coordination with competing companies for the submittal of offers has been delayed, agreed upon or validated by the very client does not exclude the responsibility of the company before the antitrust authorities.

QUESTION: Would an agreement executed between two subsidiaries of the same group of companies through which both subsidiaries reach an agreement on the bids for which they will submit their offers respectively be considered a breach of antitrust regulations?

ANSWER: No, for **Article 101 of the TFUE (and/or Section 1 LDC) does not apply as a general rule to agreements between companies pertaining to the same group**. An agreement or an exchange of sensitive information on prices between two subsidiaries would likewise fall outside the scope of application of the regulation and therefore would not be subject to sanction as an anticompetitive agreement. Notwithstanding, the fact that these are two subsidiaries pertaining to the same group does not release them of the fulfilment, as the case may be, of any requirements arising out of the regulations on public procurement.

QUESTION: Employee A receives a message in their corporate email from an employee of a competitor forwarding at the same time an email from the proposer. A can verify that, as affirmed by the competitor, the proposer would prefer to hire the competitor, and therefore asks for the submittal of an accompaniment offer to ensure the award of the contract to such competitor. Would the validation of an accompaniment offer by the proposer release the companies of their responsibilities? What if the proposer was a private entity?

ANSWER: **No. No agreement between companies aiming to manipulate or alter the result of a bid, either public or private can be justified by the consent or knowledge of conduct by the proposer.**

QUESTION: Company A has submitted an offer without a real competitive nature with the intention of favouring company B's position in the bidding of a public work, as such company had previously acted in the same way so that A was awarded a prior contract. Notwithstanding, B finally gets second position and is overcome by C, a company that is awarded the contract thanks to an offer with a very aggressive economic drop. The procurement body, in view of company A and B's signs of coordination, informs the relevant antitrust authority on the facts. Can this authority sanction company A and company B's actions considering their behaviour did not alter the result of the bid?

ANSWER: **Yes. The agreement between both companies is an infringement of the regulations on antitrust by virtue of its subject matter. Therefore, there is no need for the agreement to have been implemented in the market for the antitrust authority to be able to sanction such conduct.**

5.2 Other Agreements with Competitors

There are other agreements among competitors that may have a lawful purpose and the compatibility thereof with competition law depends on the specific circumstances, terms and conditions of the agreement and the market shares of the participating companies. Therefore, it is advisable to check with the CCO and, as applicable, the Legal Department before entering into any such agreements; particularly, the following:

- **Incorporation of Temporary Joint Ventures (TJVs):** although a TJV is a lawful figure, it may be potentially considered problematic from a competition standpoint if formed by competing companies.

  A lawful TJV allows companies that cannot submit a bid to join forces by collaborating to submit a joint bid. Therefore, it is an alliance with a pro-competition aim given that it makes it possible to submit more and better bids in a tender process.

  To avoid violating competition law when constituting a TJV, there must be proof that the real reason behind the constitution thereof (objective, credible and demonstrable) fosters competition in the tender process by allowing the submission of a bid that would not otherwise have been submitted or, as applicable, allowing the submission of a better bid.

  It must be highlighted that the validation of the incorporation of a TJV by the procurement body does not guarantee the compatibility of the relevant TJV with the antitrust regulations. For this reason, it is mandatory to convey any concern regarding the incorporation of a TJV with competitors to the relevant CCO or the Legal Department, as well as to draft a reasoned report on the need for such an incorporation.

  For more information on the constitution of TJVs and their compatibility with competition law, please refer to the document on creating Temporary Joint Ventures included as Annex 2 to this document.

- **Subhiring:** Subhiring or being subhired by competitors within the frame of bids entails two main risks from the perspective of antitrust legislation.

First, subhirings need not consist in a mechanism to compensate competitors for not having submitted an offer for a bid or for having submitted an offer without a real intention to compete for the award of the contract (see paragraph 5.1 on cartels and bid rigging)

Secondly, the information exchanged with a competitor as a result of a service provision agreement must be restricted to what is strictly necessary in order to engage in the subcontracting relationship.

As a general rule, the following precautions must be taken:

- Never request or receive information from the subcontracted company (when also a competitor) relating to other projects.
- Never request or receive information from a supplier/competitor relating to their costs or production capacity.

- **Joint procurement:** agreements between competitors to jointly purchase raw materials and other consumables generally do not constitute an infringement of competition law if the joint share of the participating companies does not exceed 15%. To this end, ACS Industrial companies may partner with competitors to purchase consumables, in particular, if they do not reach this percentage.

  Nonetheless, it is important to note that certain precautions must also be taken in this area such as refraining from exchanging information on the volumes acquired by each competitor.

5.3 Other Contact with Competitors

- **Information sharing:** infringements of competition laws often involve the exchange of strategic or commercially sensitive information between competitors. To this end, ACS Industrial employees must not under any circumstance communicate this type of sensitive information to a competitor or receive it from one.

"Sensitive information" means the information a company would normally not share with a third party external to the organization and, in particular, information that may allow the recipient to know or foresee the company's conduct in the market. As a general rule, recent data are more sensitive than historical data and detailed data or disaggregated data relating to a specific company are more sensitive than aggregate data.

Some of the details normally considered sensitive from a competition perspective include:

- Intentions of bidding in a tender process or submitting offers in relation to a specific contract;
- Current or future prices including discounts, sales and promotions;
- Sales figures, cost data or margins;
- Market shares, capacity data;
- The identity of clients or suppliers (real or potential);
- Information on manufacturing technologies, intellectual or industrial property rights and technical knowledge;
- Strategies, budgets, plans or business or marketing policies;
- Expansion or business contracting plans or plans to enter new markets or leave an existing market;
- Planned future offers, demand or supply conditions or financial indicators.

In general, information considered sensitive from a competition perspective must not be shared with anyone external to ACS Industrial companies whether or not they are considered competitors unless authorized by the CCO.

The **exchange of sensitive commercial information** sensible with competitors **is a very serious breach in itself of antitrust legislation,** without a need for companies involved in the information exchange to have made an effective use of the information exchanged.

If a competitor suggests exchanging sensitive information, they must clearly and expressly reject receiving or exchanging any such information and communicate the incident to their superior and to the CCO. If information of this kind is received (by email or during a meeting, for example), the employee must contact the CCO which may help it decide the best means to proceed by distancing him/herself from the conduct, for example.

Adopting a passive attitude is not generally a good option as merely receiving sensitive information may constitute an infringement of competition law.

Therefore, a prohibition exists to exchange strategical information with a competitor or to extend the scope of the cooperation (subjective, objective or temporary).

- **Public disclosures:** public disclosures of economic data by an ACS Industrial company may at times be necessary and justified or even be required by applicable regulations (depositing annual accounts with the Trade Register, for example). However, certain public disclosures may be interpreted by the competition defence authorities or courts as an invitation to competitors to participate in a certain commercial conduct depending on the context. As a result, the CCO must be consulted before any public disclosure of competition-sensitive information (relating to future price changes or forecasts, for example) or other matters that may influence competitors' commercial behaviour.
- **Visits to competitors' facilities:** visiting a competitor's facilities or inviting competitors to visit ours may serve a completely lawful purpose. However, these types of visits may be misinterpreted and generate a competition risk. If there are any doubts about the lawfulness of the purpose of such visits and the need to engage in them, first check with the CCO. Nonetheless, consultation is not normally necessary in a situation where an employee of an ACS Industrial company wishes to visit a competitor's facilities in the context of the constitution of a TJV, outsourcing or lawful procurement. To this end, it is important to clearly identify the lawful purpose of any visit in advance.

- **Agreements with providers**: these are prohibited to the extent that their direct or indirect subject matter is to limit the territory or the clients. Likewise, it is forbidden to reach agreements with providers who impose commitments of non-competition, non-recruitment of employees, non-recruitment of executives or exclusiveness.

5.4 Industry Associations

Business associations in the industry have a relevant role as forums for discussion and the exchange of opinions on important issues of common interest to the industry. Their activities as concerns technical requirements and specifications, quality control and applicable standards, laws and applicable regulations can bring substantial benefits for members and other operators. It must be reminded that involvement in sector associations is permitted, upon prior authorisation by the LCB.

Nonetheless, it is worth noting that industry associations may also pose important risks with regard to competition to the extent they are permanent forums of contact between competitors. Therefore, they must never facilitate the exchange of sensitive information among members such as prices and commercial strategies.

To this end, always remember that any ACS Industrial company may be declared liable for an infringement committed by an industry association it is a member of even if it has not actively participated in the infringement.

> The mere assistance **or presence at the meeting** where the exchange of information has occurred that is sensitive and inconsistent with the antitrust legislation shall be considered as involvement in a non-competitive conduct, except when the distancing from this fact has been evidenced publicly and expressly.

- Guidelines for Behaviour at Industry Association Meetings
    - Carefully review the agenda before the meeting;
    - Be sure to be informed of the different items on the agenda and that there are no doubts about the lawfulness thereof; request explanations in relation to any item that is not very clear;
    - Do not attend if you believe inappropriate matters will be discussed;

- Make sure the content of the meeting minutes is accurate, exact and corresponds to the discussions held during the meeting;
- If inappropriate matters are raised during a meeting (discussions or conversations on sensitive commercial information, for example), distance yourself from the conversation and ask that your objections be recorded in the meeting minutes;
- Leave the meeting unless the inappropriate conversation is ended;
- Inform your superior or the CCO as soon as possible if any questions are raised about whether a conversation may be compatible with competition law.
- Documents obtained within the frame of a sector association or through informal contacts with competitors that may contain signs of illegal contacts shall not be destroyed but rather immediately made available for the legal services of the company.

- **Market statistics and studies:** many industry associations or economic consultants produce market statistics for their respective sectors. These statistics are many times legal and useful to association members as well as to other operators. However, if these statistics allow companies to identify sensitive competitor data or facilitate coordination within the market, the conduct may constitute a competition infringement.

  Therefore, the CCO must be consulted before exchanging information about an ACS Industrial company with an industry association or take part in industry surveys.

  On the other hand, statistics must not be acquired or received from an industry association or economic consultant that would identify individual competitor data (instead of aggregate data) or exchanged at a frequency higher than annual without first consulting the CCO. In this regard, it should be mentioned that it is only possible to carry out and participate in general or aggregate market studies with historic commercial information (more than 12 months old).

  The same principles should be applicable in relation to market studies and reports produced by market research organizations and independent consultants.

5.5 Monitoring of meetings and contacts with competitors

This section seeks to establish the specific obligation of notifying in a detailed way any meeting with competitors where a conduct contrary to antitrust legislation may have occurred.

In this regard, the guidelines to follow by persons subject hereby are:

- **Obligation to inform on the meeting:** Any member of the organisation attending a meeting with competitors as a representative of ACS shall need to submit the form attached hereto before the relevant LCB when:
  - They have been involved or consideration has been made to engage in a conduct that is not consistent with antitrust legislation during the meeting.
  - They have been involved or consideration has been made to engage in a conduct that raises reasonable concerns on its consistency with antitrust legislation during the meeting.
  - Evidence exists on a conduct that is inconsistent with antitrust legislation carried out during the meeting by third parties that may affect ACS Industrial directly or indirectly.

  Such notice needs to be performed as soon as possible and, at all times, within the maximum period of 7 calendar days since the day when the meeting or contact with competitors has occurred.

  The form shall need to be filled in stating in a detailed way the content of the encounter, the decisions adopted and the concerns, signs of infringement or irregularities detected. Likewise, all documents relevant for the purposes of the meeting (notes and minutes of the meeting, where applicable) shall need to be attached, as well as all documents drafted after such meeting.

  The form attached together with any other relevant documents shall need to be conveyed through the Ethical Channel to the company to which the person attending the meeting pertains or, alternatively, such notice may be likewise addressed to ACS SCE's Ethical Channel.

  canaletico@acsindustria.com

The obligation to communicate the content and circumstances of the meeting shall be applicable both in case of anticipated meetings and in fortuitous or casual meetings with competitors, all this regardless of the context where the meeting took place (sector associations, trade fairs, and events or fora with an informal character).

- **Monitoring by the Legal Compliance Board:** The relevant LCB shall review the communications or reports submitted by the persons that are subject to the Protocol and, as the case may be, it shall carry out a preliminary investigation at an internal level pursuant to the Corporate Defence Procedure Activation Protocol.

- **Disciplinary Measures:** The infringement of this Protocol shall entail the relevant sanction pursuant to the legal and conventional regulations in force. Without limitation, below are certain conducts that constitute an infringement of this Protocol:

  - The reiterated failure to submit the form attached when such submittal is mandatory under the provisions herein.
  - The reiterated submittal of the form attached after the expiration of the 7 calendar day period for the submittal thereof.
  - The voluntary commission or misrepresentation of relevant information in the form attached that may compromise the company or whose effect is to avoid an efficient control by the company.

6 Relations with Customers and Suppliers

Contact with competitors is considered high-risk behaviour from a competition perspective. On the contrary, contact with customers and suppliers is often a normal part of daily commercial operations and generally does not involve any competition risks. Nonetheless, certain practices may pose risks particularly in markets where an ACS Industrial company has a strong current or future position.

It must be highlighted that it is forbidden to have a position of domination in your relations with competitors.

Although it is legal to safeguard the company's interests, commercial relations and strengths should not be used to try to exclude other companies from the market or to obtain undue profits. In general, the freedom of customers and suppliers to determine their conduct towards third parties in the market should be respected.

- Market intelligence obtained from customers and suppliers: ACS Industrial companies must not force any customer or supplier to disclose sensitive information on competitors. Without prejudice to the foregoing, occasional communication of said information is often a normal part of commercial relations. For example, a customer may communicate the prices applied by a competitor as part of its price negotiation strategy. This is lawful and ACS Industrial companies may use this information internally. However, the source of the data must be indicated in the very internal document generated when sensitive information is obtained on a competitor through this lawful means to prevent any possible suspicions that it was received from a competitor (i.e. "source or received from [name]" indicating the date).
- **Infringement of competition law by suppliers or customers:** finally, everyone must remain alert for possible infringements of competition law by business partners who are also required to comply with them. Competition infringements (a price cartel between ACS Industrial suppliers or unlawful cooperation between customers, for example) may cause ACS Industrial significant damage. These competition infringements may also involve ACS Industrial as an intermediary in the exchange of sensitive information or the organization of collusion between competitors which would lead to a risk of participating in a very serious competition infringement ("hub & spoke" cartel).

If there are reasons to believe that an ACS Industrial company may be a victim or be participating in any competition infringement, communicate your suspicion to the CCO.

7 Document Creation

Any document written by an ACS Industrial employee may someday become known by anti-trust authorities or courts of justice. As part of an investigation into potentially anti-competitive conduct, the authorities have broad powers of investigation and may conduct onsite inspections without prior notification (also known as “dawn raids”). The purpose of these types of inspections is to search for evidence, for example, the commercial reasoning behind a certain conduct, contacts with competitors, etc.

The competition authorities have the power to access documentation, both on paper and in electronic format, and irrespective of the medium on which it is stored. This includes messages in social networks, messaging applications (such as WhatsApp), chat rooms, etc. The authorities have advanced computer tools to search for electronic documents and restore deleted files.

7.1 Guidelines

Given that any document drafted may potentially be known by a competition authority, thought should always go into the way in which such a document could be interpreted by a person external to the company. Cautious wording will not prevent being held liable if the conduct constitutes an infringement of competition law but it will prevent the unlawful behaviour from being misinterpreted and considered suspicious.

The following guidelines should always be considered when drafting documents:

- Avoid using language that suggests there is something hidden such as “destroy once read / do not copy / non-officially”.
- Avoid using language that suggests the existence of market power or aggressive intentions such as “dominant / monopoly / control the market / eliminate the competition / exclude them from the market”.
- Avoid using language that suggests the company and several competitors have coordinated their behaviour in the market such as “sector policy” / stabilize the market / joint efforts / the competitors allege their goal is / we should act in line with the competitors”.

- Be specially cautious when referring to competitors and prices or other commercially sensitive information relating to them. If you need to mention said information in writing, you should indicate the lawful source thereof (for example, “received from [name], by customer [X], on [date] / in accordance with our internal estimates”).
- Clearly mark preliminary versions of documents as “DRAFTS”.
- Avoid speculating in writing about the lawfulness or unlawfulness of a certain conduct. Raise your concerns with your superior or the CCO.

The legal advising provided by external attorneys (or documents produced for the purpose of requesting such advising) are covered by attorney-client privilege and the competition authorities must not gain access to them. Notwithstanding, such advisory shall need to be processed and stored with caution. In communications with external lawyers, it is advisable to always verify that communications are protected by professional secret.

8 Consequences due to a breach of antitrust law

Administrative Sanctions to the company

Companies who are involved in a very serious infringement of the regulations may be sanctioned by the antitrust authority with penalties of up to **10% of the global business volume of the ACS Industrial Group** of the tax year immediately before. Horizontal agreements constituting a cartel, to the extent that such infringements are the most serious breaches under antitrust legislation, entail the highest sanctions.

Sanctions awarded to executive members and legal representatives

Antitrust authorities may likewise award sanctions for members of the executive body or the legal representatives of the company involved in the infringement with penalties of up to **60,000 euros.** The antitrust authorities may award such penalties to individuals who, **even when they do not occupy the first level of direction or are not members of the administration body** of the company, have the capacity to set, condition or manage the behaviour of the company in the market.

Corporate responsibility of the administrators

If a member of the administration body engages in a conduct that is inconsistent with the antitrust legislation, this may give rise to an economic and a reputational damage for the company they represent. Partners may claim liability from them for such damages to the extent that such damages arise out of an infringement of the legislation and, as the case may be, out of failing to meet the duties inherent to their position.

Indemnities	Competitors, commercial partners and clients affected may claim for the damages suffered as a consequence of the non-competitive conducts in which the company has engaged.
Criminal and Labour Liability	Infringements of antitrust legislation may also entail a **criminal liability** both for natural persons involved and for the company itself (crimes of manipulation of public bids, alteration of prices, corruption among individuals, bribery, etc.) On another note, such conduct may lead to **labour consequences** of a disciplinary nature for the employee affected and even to the employee's dismissal.
Ban On Contracting With Public Administrations	Antitrust authorities are allowed to award, together with the relevant pecuniary sanction for the company and/or its executive members, the **prohibition to execute agreements with any Public Administration** for a period of up to **3 years.** This measure may be adopted even when the illicit conduct that is being sanctioned has no relation with the alteration of the functioning of the public bids.

Nullity of the Agreements Adopted	The regulations envisage the **radical nullity of the agreements that are inconsistent with** competition, which may compromise the relations with third-party companies and other operators present in the market.
Reputational and Defence Costs	The fact of having been sanctioned for the commitment of an infringement of antitrust legislation seriously damages the **image** of the company in the market, which may lead to a **loss of prospect investors, the early termination of contracts by business partners or the exclusion from** bidding procedures. On another note, the defence of the company within the frame of a sanctioning administrative procedure and subsequent courts of appeal has a great cost for the company in terms of human resources (dedication of own personnel) and economic (legal defence).

9 FAQ on Competition Matters

1. **What should I do if I have any questions about whether an agreement or other commercial practice is compatible with competition law?**

   If you have any questions about the compatibility of an agreement or practice with antitrust law, ACS Industrial board members, directors and employees should not enter into the agreement or engage in the commercial practice until they have consulted with the CCO and the Legal Department. For such purposes, the Group's Ethical Channel may be used or, alternatively, the ACS Industrial Group company's own Ethical Channel.

2. **What should I do if I think an ACS Industrial company may have violated competition law?**

   Inform the CCO as soon as possible either through the relevant Ethical Channel or in person or by phone. Regardless of the means used to inform the CCO the due confidentiality shall be guaranteed or, as the case may be, the anonymity of the informant.

   Do not destroy documentation (either on paper or in electronic format) relating to a potential violation and do not inform anyone except the Legal Department and/or the ACS Industrial CCO or the CCO of the relevant company.

3. **What should I do if I think an ACS Industrial competitors or its business partners may have violated competition law?**

   Reporting to the CCO. In case that you are aware of such a possible infringement of the regulations as a result of a contact or a meeting with competitors, you shall need to provide a detailed report on the circumstances and the content of the meeting through the form annexed to the Protocol for the supervision of the contacts and meetings with competitors of ACS Industrial.

   Finally, the CCO will make recommendations and/or decide upon the proper measures to be adopted.

4. What is the clemency program?

Companies who convey to the antitrust authority their participation in a cartel may benefit from a full exemption of the administrative sanction (if this is the first company to convey to the authority the existence of the cartel) or a reduction up to half of the amount of the penalty provided their contribution supplies a significant added value to the preliminary investigation by the authority. In addition, subjection to the Clemency Program allows to opt for an exoneration of the prohibition to execute agreements with the public sector. Last, subjects benefitting from the payment exemption with regard to the penalty within the frame of the Clemency Program shall likewise have their liability limited at the time to face any possible claim for damages (Section 73.4 of the LDC).

In order to access the benefits above, the person requesting clemency must (i) provide detailed information on the cartel; (ii) cease all involvement in such cartel; and (iii) fully cooperate in an ongoing and diligent way with the antitrust authority throughout the investigation.

The **clemency program** allows for an exemption of up to 100% of the administrative sanction for the company or its executive members, as well as an exemption for the prohibition to execute agreements. Notwithstanding, **this program does not protect the person subject to it from the remaining consequences** arising out of the commission of an antitrust infringement that have been exposed above: claims for damages (although with a limited level of liability), nullity of the agreements and/or contracts or reputational damages.

Annexes

Annex I. Basic Rules - Competition

1. Serious consequences due to a breach of competition law

• Fines of up to 10% the overall turnover. • Individual penalties for executive members and employees of up to 60,000 euros. • Significant damage to the ACS Industrial companies' reputation(s) and corporate relations.	• Demands for damages for any harm caused. • Prohibition to execute agreements with public administrations for a maximum period of 3 years. • Disciplinary measures for management and employees.

2. Relations with Competitors

DO NOT agree to any aspect of the commercial conditions with customers or suppliers, particularly prices (including discounts or rebates).	**DO** unilaterally decide upon the commercial terms and conditions with customers or suppliers.
DO NOT agree to a collective boycott of customers or suppliers.	**DO** unilaterally decide which customers and suppliers to work with.
DO NOT agree upon market sharing with competitors such as a distribution of products, customers or geographic areas.	**DO** unilaterally decide the products to be commercialized, the customers to be served and the geographic areas to be covered.
DO NOT agree to or inform of participation in tender processes or bids submitted.	**DO** unilaterally decide whether to participate in a tender process and the conditions to be offered.
DO NOT decline an invitation to submit an offer or refrain from participating in a bid as an answer to a request made by a competitor.	**DO** decide following your own criteria as on what offers are to be submitted for the available bids and what contracts are not of interest for the company. Provide documented evidence on the reasons why an invitation to submit an offer is rejected.
DO NOT incorporate a TJV without analysing the actual need for bidding in a tender process with a competitor.	**DO** constitute a TJV with competitors if it allows both companies to submit a bid when they would otherwise not have done so.

DO NOT exchange information which allows coordination in the market or knowledge of competitors' future behaviour.	**DO** unilaterally decide upon the ACS Industrial company strategy and the commercial actions taken in the market.
DO NOT exchange information that is commercially sensitive, in particular information on bid prices, costs (including expected or estimated costs), discounts, decreases, customers, marketing strategies, investment plans or strategic decisions.	**DO** unilaterally decide upon prices and commercial conditions. If a competitor were to offer this type of information, it must be rejected. It is possible that said information may not be sensitive if outdated (more than 1 year), if it cannot be identified with the company or is publicly available.
DO NOT participate in comparative assessments ("*benchmarking*") without consulting first with the CCO or engage in surveys requiring the disclosure of information that may be identified with ACS Industrial or reveal its competitive strategy.	**DO** participate in business associations if there are guarantees there will be no commercially sensitive information exchanged.
DO NOT remain in a meeting, whether formal or informal, or continue any conversation discussing commercially sensitive matters even if you are not actively participating.	**DO** act with precaution when contacting a competitor even if at informal or social gatherings.
DO NOT gather data on competitors without at least generally identifying the source of information.	**DO** obtain market intelligence information on customers when not required and there is no economic incentive for doing so.

3. Protocol for Incidents

DO NOT destroy documents or inform anyone outside ACS Industrial.	**DO** inform the CCO through the form annexed to the Protocol for the supervision of the contacts and meetings with competitors of ACS Industrial

Annex II. Protocol on Constituting TJVs with Competitors

1 Introduction

The purpose of this protocol is to offer a series of criteria with respect to the drafting of TJV constitution agreements in order to assess their compatibility with Competition Law.

2 General Principles on Creating TJVs

A TJV is a system of collaboration between companies for a specific, fixed or indeterminate period of time to develop or execute a construction job, service or supply. It does not have its own legal personality and the holders, which may be natural persons or legal entities, shall have joint, several and unlimited liability towards third parties for all actions taken through the TJV without prejudice to any possible rights of internal recovery between the parties.

Even if licit, A TJV is a potentially problematic form of operation from a Competition Law perspective[3]. It is a system of collaboration between companies where the companies often form such alliance to submit a joint bid in a tender process; however, they are actually competitors and, therefore, the contact between them may be considered contrary to such competition.

However, a lawful TJV allows companies that cannot submit or would not otherwise individually submit a bid to join forces with sector companies that also would not otherwise individually submit a bid and collaborate by submitting a joint bid. Therefore, it is an alliance with a pro-competition aim given that it makes it possible to submit more and better bids in a tender process.

In spite of this, the use of TJVs for anti-competition purposes is contrary to article 1 of Spanish Law 15/2007, of 3 July, on the Defence of Competition and article 101 of the Treaty on the Functioning of the European Union. This infringement of competition law may lead to the opening of a sanctions case and, as applicable, may lead to the following consequences:

- The voidance under law of the TJV constitution agreement;

[3] Without prejudice to the foregoing, the CNMC (Spanish National Markets and Competition Commission) indicated in Case S/0473/13, Postes de Hormigón, dated 15 January 2015, that "*the creation of a TJV does not per se constitute an anti-competition agreement in that it is a legally accepted associative figure which is quite common in the business sector in Spain*"; it also indicated that "*its impact on competition must be assessed based on the characteristics of the companies comprising it and the specific context in which it is created*".

- The imposition of administrative sanctions;
- A ban on contracting with public administrations in the future;
- Claims for damages by those harmed by the illegality;
- The possible commission of a criminal offence under articles 262 and 284 of the Spanish Criminal Code.

To avoid violating competition law when constituting a TJV, there must be proof that the real reason behind the constitution thereof (which must be objective, credible and demonstrable) is different from collusion or an anti-competition pact and that the participation of several companies together fosters competition in the tender process by allowing the submission of a better bid or a bid that would not otherwise have been submitted.

3 General Principles on Creating TJVs

In order to constitute a TJV that is compatible with competition law, observing the following criteria is recommended:

- Ideally, each TJV should only do a single construction job, service or supply.
- A TJV constitution agreement must refer to specific construction jobs or projects (not uncertain jobs or projects which have not even been announced by the contracting authority or organization).
- The duration of the TJV should coincide with the duration of the project. In any case, the lifetime of the TJV should be restricted as much as possible to that which is strictly necessary.
- A TJV constitution agreement must include wording that manifests and provides grounds for the need to bid jointly for technical, professional or economic reasons. The wording should be as specific as possible.
- A justification report should always be prepared, even if short, of the need to bid through a TJV for each job.

4 Practical Guidelines on the Constitution of TJVs ("Red Lights")

SITUATIONS WHERE THE CONSTITUTION OF A TJV IS CONTRARY TO COMPETITION LAW

1. **The TJV is constituted by competing companies and the purpose is to prevent competition between them in a public or private tender process by submitting a single bid so they all receive at least a portion of the contract award.**

   The grounds, objective or purpose of constituting a TJV cannot be anti-competitive but rather must meet objective requirements of need.

SITUATIONS WHERE THE RISKS OF CONSTITUTING A TJV MUST BE CAREFULLY ANALYSED

In all of these cases, a casuistry analysis of the TJV must be done based on the companies comprising them and the context in which they are created.

1. **Some of the companies that comprise a TJV have the necessary material resources and personnel availability and the technical, professional and economic capacity required to participate individually in a tender process.**

   It is important to note that the Spanish competition authority has been very restrictive to this end to date. Pursuant to the precedents of the now-extinct Court of Competition Defence and the CNMC (Spanish National Markets and Competition Commission), "only when the companies involved alone lack sufficient capacity to perform the object of the tender and cannot bid individually may [a TJV] be established without any impact on competition[4]".

2. **Some of the companies comprising the TJV have submitted similar bids individually and have been awarded contracts, which proves they had sufficient technical, professional and economic solvency as demanded by the authority to be able to individually bid on the contracts and, as applicable, be awarded the contracts.**

   If one of the companies comprising the TJV has submitted a similar bid and has been awarded a contract, said company has already proven it complies with the requirements for individual submission and, therefore, could be suspect when submitting a bid along with other companies. If the circumstances of the company or market have not significantly changed, it could be difficult to justify the need to bid along with other companies.

[4] Decision of 20 January 2003, Case R 504/01, Terapias respiratorias Domiciliarias.

3. **Two or more companies have previously tried to submit a bid through a TJV, but later participate individually.**

   This situation can arouse suspicions that the companies still intend to act in a coordinated manner during the tender process as well as after the contract is awarded (by submitting cover bids, outsourcing parts of the work to each other, etc.).

4. **The companies bid individually and then outsource the execution of the work with competitors.**

   This could be a risk factor if there is a market sharing agreement to ensure that, irrespective of the party awarded the contract, the work will be done jointly.

SITUATIONS WHERE A TJV MAY BE CONSTITUTED BUT THERE MUST BE JUSTIFICATION WITH OBJECTIVE BUSINESS OR ECONOMIC GROUNDS

In all of these cases, a casuistry analysis of the TJV must be done based on the companies comprising them, the work being contracted and the context. It is important to note that there are no clear precedents to this end.

1. **One or some of the companies comprising a TJV could bid individually, but would not have done so considering certain objective, lawful and verifiable reasons** such as the following:

   - A lack of capacity to submit a credible offer at a competitive price;
   - Customer preferences;
   - The impossibility of dedicating resources to several contracts, if awarded, and therefore only bidding on a few tenders or tenders that are more likely to be awarded;
   - Internal requirements as concerns minimum profitability or the maximum risk;
   - Costs for submitting an offer versus the possibility of securing the contract;
   - Other reasons.

2. **One or some of the companies comprising a TJV could bid individually, but prefer to do so through a TJV considering the savings created as a result of the constitution thereof**:

   - A better bid due to the combination of resources and experiences;
   - Several project managers;
   - Lower transaction costs for the customer;
   - Lower total bid preparation costs;

- Other savings.

SITUATIONS WHERE CONSTITUTING A TJV IS NOT PROBLEMATIC

3. Companies comprising the TJV would not be able to bid individually.

TJVs are fully justified when there is an objective need by the companies to partner due to a lack of the companies' capacity to participate in a tender process individually.

For this to be true, a lack of sufficient productive, financial and investment capacity (ability) to submit a bid individually must be observable. The companies are then considered not to actually be competitors, not even potentially, meaning the combination of forces does not restrict the competition between them:

a) A lack of productive capacity: the companies do not alone have the technology, *know-how*, machinery, materials, raw materials, human resources, etc. needed to submit a bid individually.

b) A lack of financial capacity: the companies do not alone have sufficient resources or the capacity to submit financial guarantees or assume the risks needed to submit a bid individually.

c) A lack of investment capacity: the companies do not alone have the possibility of expanding their capacity for the period necessary or believe the investment to be made in order to submit a bid is not efficient.

All of this shall be understood in a dynamic context where companies submit bids for more than one tender process with more than one contracting authority which compromises their resources and financial capacity. All of these elements must be considered when evaluating a company's actual capacity to individually submit a bid in a tender process.

Annex III. What to do when there's a surprise competition inspection ("dawn raid")?

When the inspectors arrive

The antitrust authorities (European Commission, Spanish National Commission of Markets and Competition (CNMC) or an autonomic antitrust authority) have sufficient powers of investigation and are therefore entitled to perform **inspections at the headquarters of the company without prior notice**. Throughout the inspection, and subject to the provisions in the investigation order, and, as the case may be, the court order, the inspectors are allowed to:

- Inspect the books and other company registers.
- Make copies or take excerpts from such documents.
- Interview personnel in the company, documenting the content thereof.
- Access any room or space within the company, as well as to commercial establishments and means of transport.
- Seal off any space, book or archive.

The inspections are ordered by the antitrust authority that is competent depending on the case. If the inspector of the antitrust authority has a **preceptive court order**, the company is obliged to allow the inspection.

If one or several persons appear at the office that identify themselves as civil servants of an antitrust authority, abide by the following guidelines:

<u>You must:</u>

✓ Ask the inspectors who they wish to see and what the object of the inspection is.

✓ Ask them how many members there are in the group and which antitrust authority they represent (European Commission, CNMC or a regional authority).

✓ Politely suggest they wait in a meeting room–where there are no confidential documents or people external to the company–.

✓ Immediately inform the highest authority at the company present at the time and, as applicable, the head of the Legal Department.

✓ Inform the inspectors that the company will request the presence of an attorney during the inspection.

After this, you must:

- ✓ Ask the inspectors to wait until the company's attorneys have arrived. Remember, however, that they cannot be denied entry and will normally not be willing to wait longer than 30 minutes.
- ✓ Ask the inspectors to identify themselves and write down each of their names.
- ✓ Given that several inspectors usually arrive, politely ask them to put on identification tags indicating they are inspectors of the competent authority.
- ✓ Ask for a copy of the Investigation Order authorizing the inspection and, if not provided, ask whether the inspection was also court-authorized.
- ✓ Send a copy of the Investigation Order and, as applicable, the court order authorizing the inspection by fax or email to the highest authority at the company and the Legal Department.

During the inspection, under no circumstances should you:

AVOID

- Engaging in conversation with the inspectors except for courtesy formalities.
- Preventing the inspectors from entering company rooms or any of its offices.
- Warning other companies or associations that the company is being inspected.
- Destroy or conceal any physical or electronic document during the inspection.
- Being hostile or obstructing the inspection. There is a legal obligation to collaborate with inspections. Before refusing to provide inspectors with a document, check with an attorney
- Destroying or concealing documents, deleting emails or electronic documents from your computer, preventing access by inspectors to a particular office.
- Providing documents or information the inspectors do not expressly request.
- Answering questions on actions taken by the company or its representatives, the response to which may be self-incriminating.
- Providing documents prepared by or for attorneys outside the company or the communications held with them. These documents are protected by professional secrecy.

- Providing information not related to the object of the investigation (defined in the Investigation Order authorizing the inspection).
- Break the seals placed during the inspection.

REMEMBER

- To make sure the inspectors are always accompanied by a company representative or a lawyer ("shadowing").
- To make a copy of all documents (physical or electronic) provided to the inspectors.
- To take notes on everything that happens during the inspection (offices searched, questions asked, documents requested, possible incidents, etc.).
- To ask for time to check with your attorney if the inspectors demand explanations or information on potentially sensitive topics and ask that your attorney be present during such interviews.
- To request a signed copy of the Inspection Report and check with your attorney before signing it.
- To check with your attorney if you have any questions with regard to the company's rights and obligations.

Obstruction of an inspection carried out by the antitrust authority may entail the institution of a sanctioning procedure and the award of additional sanctions other than the sanctions that may be awarded as a result of the main investigation.

Below, there is a list of several conducts that may be construed as obstruction:

- Refuse of access for inspectors when duly furnished with a court authority.
- Providing incomplete, incorrect, deceiving or false information to the authority within the context of the investigation.
- Destroying or concealing documents, both physical and electronic.
- Breaking the seals placed during the inspection.

QUESTION: Can the inspector make copies of any type of document found by them at the place of the inspection?

ANSWER: No. Antitrust authorities do not have unlimited powers regarding access to documents. Three main limitations exist that they must respect:

- **Documents that fall outside the scope of the investigation.** The scope of the investigation must be clearly stated in the investigation order. (type of antitrust conduct and market affected). Thus, documents that do not fall within the scope of the investigation cannot be inspected or copied. **Personal Documents.** Documents exclusively personal are excluded from the investigation. Notwithstanding, inspectors can take random samples for the purposes of verifying the private and personal nature of the documents. **Mailing with external lawyers.** Communications between the company and its external lawyers are subject to professional secrecy between the lawyer and the client. In order to guarantee confidentiality of the information, it is advisable for the company to visibly state that such communications have been performed within the frame of the relation lawyer-client expressing the name of the law firm in the subject, for example.

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Annex IV. Form to provide notice of meetings and contacts with relevantcompetitors

Pursuant to the provisions in the ACS Industrial Protocol for Compliance with Competition Standards, this form shall be filled in and submitted to the relevant Legal Compliance Board depending on what ACS Industrial company the professional or professionals who have attended the meeting with the competitors pertain to, and they shall do so as soon as possible upon conclusion of the meeting.

This form must be filled in whenever an engagement in conducts that are inconsistent with antitrust legislation has occurred or has been suggested during the meeting. The obligation to fill in the form covers anticipated meetings and meetings that occur fortuitously.

Warning: Do not forget to include and attach this form to all documents or relevant information in your possession for the purposes of the meeting.

1. Information Regarding the Circumstances of the Meeting

- Date of the meeting:
- Starting and ending time of the meeting:
- State if this was an anticipated or a fortuitous meeting.
- Place and context of the meeting:
- Attendants on behalf of ACS Industrial.

Name and surnames	Position or Professional Category	Approximate Date of the Last Meeting[1] with Competitors Attended by Them

[1] Including, as the case may be, casual or fortuitous meetings

- Persons who attended the meeting pertaining to the competitors of ACS Industrial.

Name and surnames	Position or Professional Category	Company	Precise if the person attends meetings with competitors regularly.

2. Information Regarding the Content of the Meeting

- Purpose of the meeting:
- Agenda (as the case may be):

  Expressly state if, during the course of the meeting, questions where addressed that were additional or different from those envisaged in the agenda and, as the case may be, if such questions were reflected on the minutes or an equivalent document.
- Signs or irregularities detected:
- Miscellanea:

Please answer the following questions if they are applicable to the meeting on which you are reporting:

- Is this a forum or an event that takes place on a regular basis?
- Have you been in touch with other attendants before or after the meeting?
- Do you know if any of the attending companies has submitted an offer or has the intention of submitting an offer for a bidding process, either public or private, for which ACS Industrial has also submitted an offer or has the intention of submitting an offer? If the answer is affirmative, please try to identify such bid with the greatest level of detail possible.

- Has any of the attendants shared information on the conduct of their company regarding bidding procedures either present or future?
- Has any of the attendants shown an interest about ACS Industrial's conduct with regard to bidding procedures, either present or future?
- Has any relevant aspect with regard to bidding procedures, either present or future, been addressed during the meeting?