

# COMPETITION LAW FOR SMALL COMPANIES

**ANTITRUST = LARGE CORPORATIONS.**

**A FALSE COMMONPLACE TO BE DISAVOWED**

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# Ratio of Antitrust Law

- Antitrust law = charter of freedom
- Antitrust law = protection from misuse of market power by dominant firms
- Sherman Act 1890 = the aim of competition law is to protect small businesses from abuse of market power
- Today = competition laws and regulations focused on consumers' protection

# ASSUMPTION

I work in a small company, in a very competitive market and therefore antitrust law does not interfere with my daily work

**FALSE**

# THE “SPACCATINA” CASE

The Italian Antitrust Authority in early 2000’s found out a cartel on the price of the most common and cheap bread roll called “SPACCATINA” (2 € per kg) agreed among 5 bakeries in the city of Trento (100.000 inhabitants).



## WHY IS THIS ASSUMPTION FALSE?

ANTITRUST LAWS DO NOT NECESSARILY REGARD COMPANIES WITH A BIG TURNOVER AND/OR IN A DOMINANT POSITION.

THERE ARE MANY AREAS OF ANTITRUST LAWS WHICH MAY INVOLVE ALSO SMALL AND MEDIUM SIZED UNDERTAKINGS

# WHY IS THIS ASSUMPTION FALSE?

ARE YOU REALLY IN A SAFE HARBOUR?

MAYBE YOU ARE NOT SMALL ENOUGH AND NEED TO TAKE A LOOK TO THE FOLLOWING PARAMETERS.

- National thresholds
- Relevant market (product market and geographical market)

# WHY IS THIS ASSUMPTION FALSE?

THERE IS A GOOD PART OF ANTITRUST LAW  
WHICH INVOLVES ANY KIND OF COMPANY IN  
ANY MARKET

## Examples

1. Hardcore restrictions
2. Cartels
3. Merger Control

## WHY IS THIS ASSUMPTION FALSE?

MANAGEMENT'S BEHAVIOUR IN SMALL AND MEDIUM COMPANIES IS MUCH MORE SUBJECT TO ANTITRUST RISK

1. No procedures
2. Cultural reluctance
3. Unprepared to emergencies (dawn raids)
4. Some behaviours which apparently look “normal” in the commercial world are in fact sanctioned by antitrust law



## WHY IS THIS ASSUMPTION FALSE?

### REMEMBER:

Any meeting or conversation with a competitor may raise suspicion

Unlawful agreements must not necessarily be in writing

A simple exchange of information may per se fall within the provision of article 101 of the Treaty.

# WHY IS THIS ASSUMPTION FALSE?

- Small Companies are less self-standing than big corporations. They often associate with other undertakings and/or act through Business Associations
- Hence.....more occasions to meet competitors
- Hence.....higher risk of suspicious activities

# Business Associations

EC Regulation 1/2003 provides a collateral liability of the associated enterprises if association is in breach of antitrust laws:

*When a fine is imposed on an association of undertakings taking account of the turnover of its members and the association is not solvent, the association is obliged to call for contributions from its members to cover the amount of the fine*

# WHY IS THIS ASSUMPTION FALSE?

- CASE LAW REGARDING SIMPLE EXCHANGE OF INFORMATION
- HUB AND SPOKE CARTELS
- SUBTLE DISTINCTION BETWEEN ADMITTED BENCHMARKING ACTIVITIES AND UNLAWFUL RESTRICTIVE PRACTICES

## WHY IS THIS ASSUMPTION FALSE?

SMALL AND MEDIUM COMPANIES WOULD BE MORE SEVERELY COMPROMISED AS A CONSEQUENCE OF THE IMPOSITION OF AN ANTITRUST SANCTION

1. Fines expressed as % of the turnover
2. Criminal sanctions
3. Disqualification of management
4. Civil damages
5. Reputational damage
6. Considerable Legal Fees

# WHAT TO DO: SPREAD ANTITRUST CULTURE IN YOUR COMPANY, EVEN IF YOU THINK IT IS UNNECESSARY

- Establish procedures
- Use Compliance Programmes
- Adopt e-mail and correspondence retention policies
- Scare them

# WHAT TO DO: BE PREPARED TO DAWN RAIDS

DAWN RAIDS ARE MORE AND MORE A FREQUENT FEATURE OF CORPORATE LIFE AND CAUSE DISRUPTION BOTH TO CORPORATE ENTITIES AND MANAGEMENT, ESPECIALLY IN SMALL AND MEDIUM ENTERPRISES

# WHAT TO DO: BE PREPARED TO DAWN RAIDS

## STRONG INSPECTION POWERS

- Access any premises
- Check books and accounts
- Seize originals
- Seal books and premises
- Question personnel
- Access personal domicile and vehicles of directors and employees



# WHAT TO DO: BE PREPARED TO DAWN RAIDS

## KNOW YOUR RIGHTS

- Training and existence of procedures may help to create a cooperational climate with authorities
- Cooperation is favourably viewed.
- Existence of procedures may avoid business disruption

# WHAT TO DO: BE PREPARED TO DAWN RAIDS

## KNOW YOUR RIGHTS

- Clear identification of the investigated entity
- Right of the investigated entity to take copy of the seized originals
- Presence of a lawyer
- Fishing expedition is inadmissible
- Privilege?

# WHAT TO DO: BE PREPARED TO DAWN RAIDS – THE LEGAL PRIVILEGE

- THE AKZO NOBEL CASE

in-house counsel are not independent practitioners  
and, therefore their communications are not subject  
to legal privilege

# Antitrust as a Shield, Antitrust as a Sword

- not only antitrust law is a danger to be beware of, but it can also be a weapon of commercial success
- Antitrust laws enforcement helps to preserve two freedoms, which small business particularly care about:
  - the freedom to engage in entrepreneurship
  - the freedom to innovate