

**Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE****Annual Report on Competition Policy Developments in Italy****-- 2016 --****5-6 December 2017**

This report is submitted by Italy to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 5-6 December 2017.

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1. Executive Summary

1. This report covers the enforcement and advocacy activities carried out in the past calendar year (1 January 2016 to 31 December 2016) by the Italian Competition Authority (the Authority or the AGCM), which is the agency responsible for enforcing the competition law in Italy, and, where appropriate, it highlights significant developments up to October 2017.

2. With respect to **competition enforcement**, the Authority confirmed its vigorous fight against **cartels** and **bid rigging practices**, ascertaining violations in six cases and achieving another record-breaking year, having handed out €245.5 million in fines; this marks a 36% increase in two years, a clear upward trend in the amount of fines imposed by the AGCM in cartel proceedings. The total fine levied in the Vending machine cartel case exceeded €100 million and represents one of the highest ever imposed by the AGCM for a cartel infringement.

3. Furthermore, the Authority's anti-cartel enforcement action has supported government efforts in fighting corruption and improving efficiency in public procurement, in close co-operation with the Anti-Corruption Agency, procurement agencies and the judiciary. This commitment is further confirmed by numerous ongoing investigations in bid-rigging. Notably, in February 2017, the Council of State upheld a recent bid rigging decision concerning a centralised procurement procedure worth €1.6 billion for school cleaning services.

4. In 2016, the Authority also reinvigorated enforcement against **abuses of dominance**, with several elements of novelties. In one case it adopted, for the first time in a while, **interim measures**. Furthermore, the AGCM issued its first decision on **abuse of economic dependence**, fining a company active in the sector of gas distribution.

5. With specific regard to the three investigations closed during the year, the Authority swiftly removed possible obstacles to entry or growth of efficient firms in two exclusionary abuses. In particular, in one investigation concerning the market for the provision of financial information services to investors and brokers, the AGCM accepted for the first time **structural commitments** proposed by the London Stock Exchange Group Holding Italia and its controlled companies.

6. In the third case, the AGCM addressed one of the most controversial types of infringement such as **excessive pricing**, concerning indispensable off-patent treatments. The case involved a group of anti-cancer drugs whose rights to market had been acquired in 2009 by Aspen, a South African multinational which, through aggressive negotiations with the Italian Pharma Agency, obtained in 2014 sharp price increases of, depending on the product, between 300% and 1500%. Aspen's successful negotiations were also based on the credible threat to withdraw the drugs from the Italian markets. According to the Authority's investigation, such increases were unjustified, i.e. unrelated to any measurement of the production costs incurred to produce the drugs, considering that Aspen had not incurred any research costs and did not produce the drugs directly. The final decision to impose a €5.2 million sanction on Aspen relied upon a robust economic analysis addressing the complexities in the assessment of excessive pricing and taking into account the specific circumstances of the case.

7. In the field of **merger review**, the Authority has closely monitored the consolidation process that is occurring in several sectors affected by technological changes. The AGCM thoroughly scrutinised two major mergers in the radio and

publishing sectors and used structural remedies to address competitive concerns. Furthermore, **a revision of the national merger notification thresholds** was implemented by the legislator, following the Authority's recommendations.

8. Enforcement achievements were complemented with successful results in **competition advocacy**. The monitoring of the impact of advocacy initiatives, carried out and published every six months, shows that the Authority is increasingly seen as an influential advocate for competition. Indeed, the vast majority of the AGCM's 79 opinions delivered in 2016 were issued upon requests of public administrations and approximately 70% of the opinions were totally or partially considered and implemented. During the year, the Authority also concluded five in-depth **market studies**: in particular, the recommendations followed from the inquiries on local public transport and waste management contributed to the on-going public debate on the reforms discussed by the government and legislator.

9. Promoting the digital economy was a key objective of the Authority's advocacy activity in 2016. The AGCM advised the government on the development of the ultra-broadband network, by issuing opinions on tenders for concessions to build and manage ultra-broadband network infrastructure in market failure regions. Moreover, the Authority intervened in relation to the management of rights for online music services and the entry of platform-based operators in the long haul bus transport sector.

10. Finally, as recommended by the OECD, the Authority carried out its annual estimate of the **impact of its competition enforcement actions**, based on the methodology developed by the OECD; the benefits for consumer welfare in 2016 were quantified in around €597 million (the 2015 figure was €390 million) of which €504 million from anti-cartel enforcement only.

2. Changes to competition laws and policies, proposed or adopted

2.1. Amendments on the merger notification system

11. The Annual Law on competition approved in August 2017 (see section 1.2 below) has brought important changes to the merger notification system, in line with international best practices. In 2013, a reform had already modified the notification test, as a result of which the number of notifications of non-problematic transactions reviewed by the Authority have significantly reduced, easing costs and burden for businesses. However, the monitoring exercise carried out by the Authority in 2014 highlighted that an adjustment in the level of thresholds was desirable in order to minimise the risks that some potentially problematic transactions could escape the AGCM review; hence, the Authority recommended a revision of the second threshold to the government, suggesting several options supported by simulations on the impact on the agency and businesses¹.

12. In 2017, the Parliament reformed the system again, also thanks to the continuing advocacy efforts of the AGCM: the 2017 annual law on competition decreased the second threshold concerning the Italian turnover of the target company from €49 million to €30

¹ For an in-depth discussion, see the Authority's contribution to the June 2016 OECD Jurisdictional nexus in merger control regimes, available at the link: [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/WP3/WD\(2016\)18&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/WP3/WD(2016)18&docLanguage=En)

million and clarified that this second threshold – previously referred to the national turnover of the target company only - shall be met by each of at least two of the undertakings concerned, leaving unchanged the first threshold (i.e., the combined aggregate turnover in Italy of all undertakings concerned shall be higher than €492 million).

13. The modification of the second threshold, in particular, will enable the notification system to capture transactions having a significant and direct economic connection to the Italian jurisdiction, in line with international best practices according to which the local nexus which should be measured by reference to the activities of at least two parties to the transaction in the local territory. Finally, it is likely that the new system, by broadening the scope of the notification obligations, will allow the Authority to review a greater number of concentrations.

2.2. The annual law on competition

14. In August 2017, the Parliament approved the long-awaited annual law on competition (Law no 124/2017), based on a government's proposal which was inspired by recommendations submitted by the AGCM in previous years². The law introduced measures in several sectors, including regulated professions, the insurance sector, the telecommunications industry, and the electricity and gas sectors. Parliamentary discussions weakened several competition enhancing provisions, particularly those concerning regulated professions and pharmacies, while new restrictive provisions for the tourism sector were introduced.

15. Some notable measures introduced by the law are summarised below:

- In the notary professions, the number of notaries is increased (from 1 every 7,000 to 1 every 5,000) and the geographic scope of their activities enlarged (possibility to open a second office within the Region in which the professional is established).
- Starting from 10th September 2017, state controlled group Poste Italiane will no longer enjoy the monopoly over the delivery service and notification of judicial papers and fines for violation of driving rules.
- With regard to the distribution of pharmaceutical products, the law allows limited liability companies to own pharmacies with a regional cap of 20% and a prohibition of vertical integration between pharmacists and investors; the reform also removes the limit to own more than four pharmacies. However, contrary to the AGCM recommendations, the law does not remove the quota regime for the pharmacies, and it does not open the market for drugs with compulsory prescription (but no state reimbursement).
- The law postpones to 1st July 2019 the date of entry into force of the liberalisation of the retail markets for energy and gas utilities, previously set for the 30th of June 2017.

² Article 47(2) of Law 99/2009 states that “*the Government, acting on a proposal from the Minister for Economic Development [...] taking into account any recommendations submitted by the Authority [...] shall submit the annual bill on markets and competition to Parliament.*” Therefore, since 2010, the AGCM has submitted every year to the government a report containing all its advocacy proposals. In February 2015, the government adopted a draft law on competition, for the first time complying with the 2009 legislation, on the basis of the 2014 AGCM proposal. The draft law, amended several times, was eventually approved by the Senate on August 2017.

- The law delegates to the government to adopt a legislative decree to update the discipline of non-public transportation services, to include services provided via web apps using technological platforms to connect passengers with drivers.
- Contractual clauses forbidding hotels and tourist accommodation operators from offering prices, terms and conditions better than those charged by the same through third parties (i.e. online booking platforms) are null and void³.
- As specified above, the law also brings important changes to the merger notification system by broadening the scope of the notification obligations.

2.3. The transposition of the European antitrust damages directive

16. The institutional framework for the protection of competition was strengthened recently by the adoption of Legislative Decree No 3 of 19 January 2017 transposing the Directive 2014/104/EU on antitrust damages actions. The Authority actively participated first at the European level in drafting the Directive, and then at the national level, in its transposition. The main changes introduced by the legislative decree include:

- A presumption of the existence of damages, in case of any infringement which constitutes a cartel (including bid-ridding).
- The binding nature of final and conclusive (i.e. not further subject to appeal) AGCM decisions or the judgments issued pursuant to their judicial review before the administrative courts, with the binding effect limited to the existence of the infringement and the identification of the undertaking(s) liable therefor (it does not cover the existence or amount of harm nor the causal link).
- The attribution of specific powers to judges to order the disclosure also of “categories” documents (including those contained within the case file of the proceedings by the Authority), in favour of both the claimants and the plaintiffs. In particular, the set-up of a co-ordination mechanism between private and public enforcement in relation to the disclosure of documents: on one hand, national courts may request assistance from the Authority in the assessment of the nature of the information for the purpose of establishing whether the documents falls in the so-called black list, i.e., documents which may never be disclosed by the Authority in order to protect the effectiveness of public enforcement⁴. On the other hand, the provision according to which the Authority- to the extent that it is willing to state its views on the proportionality of disclosure requests - may,

³ Such outright prohibition of all hotel rate parity clauses applied by online travel agents replaces Booking.com commitments accepted by the Authority in July 2015. Booking.com had committed to narrow its “wide” rate parity clauses which had prohibited hotels from offering better prices through Booking.com’s rivals, in the sense that the company could only prevent hotels from offering better prices directly through their own websites (or offline when promotions are marketed online and aimed at the general public). For more information on the case, see Italy’s contribution to the OECD Competition Committee on 27-28 October 2015 on across platform parity agreements, available at: [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/WD\(2015\)58&doclanguage=en](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/WD(2015)58&doclanguage=en)

⁴ This co-operation instrument is contained in Chapter III of the Directive dedicated to the “Disclosure of Evidence”. The relevant norm is the one contained in article 6, para. 7 (article 4, paragraph 5 of the Legislative Decree).

acting on its own initiative, submit observations to the national court before which a disclosure order is sought⁵.

- If a proceeding is pending before the AGCM (or the European Commission), evidence from the “grey list” (i.e. the information prepared for the public enforcement procedure by the parties, the EU Commission or the AGCM), can be disclosed only after the end of the public enforcement procedure, thus the judge may decide to suspend the civil case. This option has not been expressly provided for by the Directive, but the Italian legislator included it in the legislative decree.
- The possibility to ask to the Authority for assistance in quantifying damages.
- The explicit recognition of passing on defence.
- The ban towards over-compensation (e.g. “punitive damages”) for prospective plaintiffs in these antitrust damages actions⁶.
- The harmonisation of limitation periods across EU Member States, providing for a minimum limitation period of 5 years (a period which shall not begin to run before the infringement of competition law has ceased and the claimant knows of the infringement of the harm caused and of the identity of the infringer) and for the suspension of such limitation period while a proceeding on the same violation is pending before the Authority (such suspension is prolonged for one year after the infringement decision has become final or after the proceedings are otherwise terminated)⁷.
- The removal of joint and several liability for successful leniency applicants and for SMEs with market shares below 5% during the period of the infringement and providing that this would irretrievably jeopardise their economic viability and cause their assets to lose all their value (with the relevant exception of SMEs ringleaders, and in case of recidivism)⁸.

17. The implementation of the European private enforcement directive will provide the Italian courts with a broader and improved range of procedural tools and clear substantive rules in hearing and deciding antitrust damages actions. The number of private enforcement cases is increasing⁹ and the Authority is ready to co-operate with the judiciary a considerable increase in the number of damages actions is therefore expected in the future, thus contributing to the effectiveness of the second pillar of the antitrust rules enforcement.

⁵ This provision is contained in Article 6 para. 11 of the Directive (article 4, paragraph 7 of the Legislative Decree).

⁶ See Article 3, para. 3, of the Directive. See Article 10, para. 2, of the Legislative Decree.

⁷ See Article 10 of the Directive. See Article 8 the Legislative Decree.

⁸ See Article 11 of the Directive. See Article 9 the Legislative Decree.

⁹ According to the government’s impact assessment analysis of the legislative decree, from 50 to 60 cases appear as pending before the Italian courts from 2014 to 2016, mainly before the Milan court.

3. Enforcement of competition laws and policies

3.1. Action against anticompetitive practices, including agreements and abuse of dominant positions

3.1.1. Summary of activities

18. In 2016, the Authority closed seven investigations concerning anticompetitive agreements, including cartels, assessed three abuses of dominant position and carried out five in-depth investigations in the mergers area.

Table 1. Activity of the Authority

	2015	2016
Anticompetitive agreements (incl. cartels)	14	7
Abuses of dominant position	3	3
Mergers of independent enterprises	7	5
Separation obligations	4	1
Sector inquiries	2	5
Non-compliance with the decision	-	3
Non-compliance with prior notification obligations	-	2
Article 62 – Trade relations (sale of food products)	2	-
Fines on gas quota	1	-
Recalculation of fines	2	1

Table 2. Proceedings concluded in 2016, divided by type and outcome

	Non-infringement of the law	Infringement of the law, conditional authorisation, modification of agreements, acceptance of commitments	No jurisdiction or inapplicability of the law	Total
Anticompetitive agreements (incl. cartels)	-	7	-	7
Abuses of dominant position	-	3	-	3
Mergers of independent enterprises	46	5	1	52

19. As for the judicial review, in 2016, seven out of eleven decisions were upheld entirely or partially by the TAR of Lazio (the first instance level). In the same period, four out of seven decisions were upheld entirely or partially by the Consiglio di Stato (the Supreme Administrative Court).

Agreements

20. In 2016, the Authority concluded seven investigations, finding an infringement in six cases: five concerned violations¹⁰ of art. 101 of the Treaty on the Functioning of the

¹⁰ Case N. 1783 - ACCORDO TRA OPERATORI DEL SETTORE VENDING; Case N. 1789 - AGENZIE DI MODELLE; Case No. 1790 - VENDITA DIRITTI TELEVISIVI SERIE A 2015-2018; Case N. 1792 - GARE

European Union (TFEU) and one¹¹ a violation of the equivalent provision of the Italian Competition Law (art. 2 of Law no 287/90)¹²; overall, the Authority imposed fines amounting to €245,470,793. In the seventh case, concerning the online hotel booking sector, the proceedings involving Booking.com were closed in 2015 with binding commitments while the proceedings involving the other party, Expedia, were closed in 2016 with no ground for action since the party voluntarily adopted similar commitments¹³.

21. Seven investigations were still under way as of 31 December 2016, 6 of which pursuant to art. 101 of TFEU¹⁴ and one pursuant to art. 2 of the domestic law¹⁵, as well as two for the revision of commitments¹⁶ and one for the redetermination of fines¹⁷.

Table 3. Agreements examined in 2016, divided by economic sectors (proceedings concluded)

Main sector involved	
Financing/Banking	1
Real estate services	1
Catering and food services	1
Healthcare and social services	1
Other services	1
Tourism	1
TV and radio broadcasting	1
Total	7

Abuses of dominant position

22. In 2016, the Authority concluded 3 investigations concerning abuses of dominant position. In one case, the proceeding confirmed the infringement of art. 102 of the TFEU¹⁸ and the Authority imposed a fine totalling €5,225,317, while in the other 2 cases

OSSIGENOTERAPIA E VENTILOTERAPIA; Case N. 1777 - *TASSI SUI MUTUI NELLE PROVINCE DI BOLZANO E TRENTO*.

¹¹ Case N.: 1710 - *USI IN MATERIA DI MEDIAZIONE IMMOBILIARE*.

¹² The English version of the law n. 287/1990 is available at the following link:<http://www.agcm.it/en/competition/competition-legislation/1727-law-no-287-of-october-10th-1990.html>

¹³ Case N. 1779 - *MERCATO DEI SERVIZI TURISTICI-PRENOTAZIONI ALBERGHIERE ON LINE*. A description of the Booking.com proceedings can be found in the 2015 annual report, available at the following link; <http://www.agcm.it/en/component/joomdoc/annual-reports/AnnualReport2015.pdf/download.html>

¹⁴ Cases N.: 1742 - *TONDINI PER CEMENTO ARMATO*, 1791 - *MERCATO DEL NOLEGGIO AUTOVEICOLI A LUNGO TERMINE*, 1793 - *AUMENTO PREZZI CEMENTO*, 1794 - *ABI/SEDA*, 1802 - *RC AUTO*, 1796 - *SERVIZI DI SUPPORTO E ASSISTENZA TECNICA ALLA PA NEI PROGRAMMI COFINANZIATI DALL'UE*.

¹⁵ Cases N.: 1797 - *CONSIGLIO NOTARILE DI ROMA, VELLETRI E CIVITAVECCHIA/DELIBERA IN TEMA DI DISTRIBUZIONE DEL LAVORO NELLA DISMISSIONE PUBBLICA*.

¹⁶ Cases N.: 1724C - *COMMISSIONE INTERBANCARIA PAGOBANCOMAT*, 1773C - *CONSORZIO BANCOMAT-COMMISSIONI BILL PAYMENTS*.

¹⁷ Case N. 1785 - *GARA CONSIP SERVIZI DI PULIZIA NELLE SCUOLE*.

¹⁸ Cases N.: A480 - *INCREMENTO PREZZO FARMACI ASPEN*.

the Authority concluded the investigations accepting the commitments proposed by the firm¹⁹.

23. On 31st December 2016, 13 proceedings were pending, of which 11 pursuant to article 102 of the TFEU²⁰ and two proceedings pursuant to the equivalent domestic provision (art. 3 of law no 287/90)²¹.

24. *Finally, the AGCM* also adopted **interim measures** at the outset of an investigation in the local transport sector launched in 2016; the interim order required APS Holding SpA, the incumbent service provider, to supply the local transport authority with all the information which was deemed necessary in order to promptly finalise a bidding procedure for the award of a new contract for local transport services²².

3.1.2. Description of significant cases regarding anticompetitive agreements and concerted practices

Case no. 1783 – Vending machine services

25. In June 2016, the Authority imposed a fine of over EUR 100 million on the main vending machine operators in the food and beverage sector and on their industry association, for infringing Art. 101 of the Treaty on the Functioning of the European Union (TFEU) through market sharing and price fixing. This case marks one of the highest fines the Italian enforcer has ever imposed for a cartel.

26. In the AGCM's assessment, the undertaking involved committed a single and continuous infringement of art. 101 of the TFUE. In particular, the parties agreed to share the Italian vending market and their customers, via bilateral and multilateral non-aggression agreements - also on the occasion of public and private tenders - and customers' swaps, as well as to avoid price competition in the market, by discouraging all market players from adopting aggressive pricing policies.

27. The investigation findings showed that the parties defined each other as "competing friends", avoiding to submit offers to each other's customers on the occasion of calls for tenders or request for quotation, on the basis of a "non-belligerence agreement", which also provided for a compensation mechanism based on giving back customers of equivalent value to those who had switched from their "traditional" providers. Such collusion was facilitated by the corporate linkages existing among the undertakings, in the form of minority shareholding or interlocking directorates.

¹⁹ Cases N.: A482 - *E-CLASS/BORSA ITALIANA*; A486 - *ENEL DISTRIBUZIONE-RIMOZIONE COATTA DISPOSITIVI SMART METERING..*

²⁰ Cases N.: A484 - *UNILEVER/DISTRIBUZIONE GELATI*, A487 - *COMPAGNIA ITALIANA DI NAVIGAZIONE-TRASPORTO MARITTIMO DELLE MERCI DA/PER LA SARDEGNA*, A493 - *POSTE ITALIANA/PREZZI RECAPITO*, A495 - *GARA TPL PADOVA*, A498A - *ENEL-PREZZI SERVIZI DI DISPACCIAMENTO AREA BRINDISI*, A489B - *SORGENIA-PREZZI SERVIZI DI DISPACCIAMENTO AREA BRINDISI*, A499 - *ASSICURAZIONI AGRICOLE/COMPORAMENTI ESCLUDENTI CODIPRA*, A5000B - *TELECOM ITALIA-SMS INFORMATIVE AZIENDALI*, A500A - *VODAFONE-SMS INFORMATIVE AZIENDALI*, A489 - *NUOVO IMAIE*, A490 - *SOFTWARE PROCESSO CIVILE TELEMATICO*.

²¹ Cases No: A501 - *CAMERE DI COMMERCIO-MERCATO DEI SERVIZI DI CERTIFICAZIONE DEI VINI DI QUALITÀ*, A503 - *SOCIETÀ INIZIATIVE EDITORIALI/SERVIZI DI RASSEGNA STAMPA NELLA PROVINCIA DI TRENTO*.

²² See AGCM decision of 20 July 2016, case A495 – *Gara TPL Padova*.

28. Price co-ordination and alignment also involved the trade association which actively promoted (e.g. by sending circulars, press releases or organising meeting on the territory) common responses on the occasion of external shocks (such as a VAT increase introduced in 2013) in order to prevent deviating behaviour which could destabilise the collusive outcome. The agreement enabled the cartelists to maintain stable market shares at least from 2010 to 2014. Moreover, the Authority found that the prices of the main products increased proportionally more than underlying costs between 2008 and 2014 despite the economic downturn. In July 2017, the administrative court of first instance confirmed the AGCM's decision.

Case No. I789 – Model agencies

29. In October 2016, the AGCM closed formal proceedings against several enterprises in the model management sector and their trade association and ascertained a breach of Art. 101 of the TFEU in relation to the supply of services to fashion houses in Italy. The violation concerns a comprehensive agreement between national model agencies aimed to jointly define the prices to be applied to the customers requiring the models' professional services. The case stemmed from a leniency application on a model agency which applied for leniency also in the UK.

30. In the AGCM's view, the enterprises, also through their trade association, put in place a single and continuous infringement lasting at least from 2007 to 2015, in the national supply market of model management services. Namely, the parties consulted each other through different means (emails, meetings in the room of the association, exchange of information and documents) in order to jointly define all the prices to be quoted to customers in the model management market: the price of the performance of the model paid by the customers (e.g., fashion firms); the commission paid to the agency by the customers; the commission paid to the agency by models; the additional fee for the right to use the model's images online; the additional fee for other professional services by the model.

31. In light of the fact that the trade association modified its statute and adopted an antitrust Code of Conduct and six agencies similarly adopted a competition compliance program, the AGCM recognised a mitigating circumstance equal to 5% of the final fine. The AGCM liaised and co-ordinated its investigation with the French and the UK national competition authorities, which simultaneously carried out similar cases in their jurisdictions.

Case No I792 –Tenders for the supply of home-care services of ventilation therapy and oxygen therapy

32. In December 2016, the AGCM ascertained three distinct agreements, in breach of Art. 101 TFUE, aimed at co-ordinating participation in tenders for the supply of home-care services of ventilation therapy and oxygen therapy, called by the Health Authorities of the City of Milan (for patients located in Milan area), and of the Regions of Marche and Campania. Sixteen companies, some of them involved in more than one tender, were fined by a total amount of €46 million.

33. As for the agreement relating to the four tenders for the supply of ventilation therapy services for patients located in the Milan area, the Authority found that co-ordination took place via a complex strategy consisting in the bid-suppression or in the submission of patently inadmissible bids in the first three tenders, and in the submission of identical economic offers, equal to the auction base price, in the fourth tender. The

Authority found evidence of contacts between the parties aimed at aligning their individual responses to the contracting authority, in particular by refusing to accept the request for an extension of the supply contracts in force and inviting the Health Authority to raise the auction base price for the following tender.

34. In relation to the supply of home oxygen therapy services for patients located in the Marche Region, the parties co-ordinated their behaviour in order not to participate in the tender notwithstanding a number of preliminary meetings organised by the contracting authority with the purpose to set the tender rules in light of the technical expertise provided by the companies. As a consequence, the contracting authority was discouraged from launching other tenders, thus leading to the supply services being extended at more favourable conditions than those available in the context of the tender.

35. Lastly, in relation to the tender for the supply of home medical gases and respiratory services for residents of the Region of Campania, the Authority found that on the occasion of a tender called by Health Authority in 2014, the parties agreed firstly to hinder the launch of the tender and later, once the tender was called, they decided the allocation of the lots among them. The latter strategy is alleged to have been implemented by submitting cover bids for certain lots, and precisely for those lots in relation to which a given company had agreed, in co-ordination with the others, not to compete with the other companies.

3.1.3. Description of significant cases regarding abuses of dominant positions

Case No A482 – E-Class / Borsa Italiana (structural commitment)

36. In February 2016, the Authority closed an investigation by accepting the commitments presented by London Stock Exchange Group Holding Italia S.p.A., and its controlled companies Borsa Italiana S.p.A. (hereafter BIt) and BIt Market Services S.p.A. (hereafter BIMS), respectively active in the upstream market for the management of trading platforms and in the downstream market for the provision of financial information services to investors and brokers.

37. On the basis of a complaint filed by e-Class, a competitor of BIMS in the downstream market, an investigation was launched on an alleged violation of article 102 TFEU, focusing on the application by BIt of some contractual provisions concerning the access and the use of its financial data in a discriminatory manner in order to favour its downstream vendor BIMS.

38. Vendors like e-Class and BIMS use the financial information created and made available by the managers of the trading platforms as inputs to supply their financial information services. According to the Authority, this information is an essential input for the vendors to carry out their activities in the downstream market. In particular, the contractual terms set by BIt could foreclose vendors from the market for the supply of financial information services, in several ways, in particular, by restricting the access of vendors to the financial information and imposing on vendors fees different from those applied on BIMS, as a result of which vendors could not match the offers made by BIMS to its customers.

39. To deal with the competition concerns raised by the Authority, BIt and BIMS submitted a set of behavioural and structural commitments, amended after the market test, which were made binding by the AGCM in its final decision. The main commitment concerned the divestiture of the business branch of BIMS supplying financial information services, thus determining the end of the vertical integration between the owner of the

financial data in the upstream market and the service provider competing with other operators in the downstream market. This structural remedy was accompanied by behavioural commitments to ensure functional separation in the transition period. Moreover, the parties committed to make the best effort to offer the same standardised contractual conditions for accessing BIt's financial data to all vendors operating in the downstream market for the provision of financial information services.

Case No A480 Aspen / Excessive and unfair prices

40. In September 2016, the Authority fined the pharmaceutical group Aspen €5.2 million for an infringement of Art. 102(a) of the TFUE, consisting in the imposition of excessive and unfair prices for its off-patent anti-cancer drugs, whose marketing rights were bought from GlaxoSmithKline in 2009.

41. In Italy, Aspen drugs are classified as “essential drugs” by the National Health System (NHS), thus they are entirely reimbursed by the State and the Italian Pharma Agency (AIFA) is responsible for price negotiations and revisions. In 2013, Aspen entered into a negotiation with AIFA in order to obtain new reimbursement prices which were eventually approved in March 2014 with substantial increases, ranging from 300% to 1,500% compared to the prices before the renegotiation, which dated back to the time of the first marketing authorisation ('50s and '60s). AIFA was forced to approve these new reimbursement prices since Aspen had credibly threatened to leave the Italian market. Furthermore, during the negotiations with AIFA, a shortage of its drugs in the Italian distribution system was observed despite the absence of any production problems.

42. The investigation found that Aspen was the only company active in the relevant markets, so neither effective nor potential competition could undermine its monopoly. Although the patents on these drugs have long expired and notwithstanding that fact that these drugs are still used for the treatment of severe blood cancers, no entry has been observed in those markets, as entry conditions were not favourable. On the demand side, while the pharma agency AIFA works as a single buyer aggregating all the demand, the negotiations occurred in a situation of asymmetric bilateral monopoly where the supplier had higher bargaining power.

43. The analysis of the conduct was conducted in two steps following the EU case law (notably *United Brands*): first an assessment of the excessiveness of the new prices charged by Aspen with respect to costs, then an analysis of their unfairness. In particular, the Authority considered case specific elements to evaluate the general unfairness of the prices applied by Aspen, in particular: a) the absence of any economic justifications: no increase in production or distribution costs documented by Aspen; no justification based on the innovative efforts and on R&D expenditure; b) the absence of any non-cost related factor leading to an improvement in quality or in the level of service to the NHS or patients; c) the nature of the drugs and the absence of substitutes leading to inelastic demand, i.e., no possibility for patients to shift to alternative medical life-saving treatment.

44. According to the Authority, the specific facts of the case warranted an antitrust intervention; a situation of monopoly due to a past exclusive right, with no likelihood of entry. No regulator with the ability to curb the significant price increase unjustified by any change in costs or innovative effort.

45. The Authority ascertained the infringement and issued a cease and desist order with no indication on prices. In the decision, Aspen was also required to inform the Authority, within 60 days from the decision's date, of the actions adopted to comply with

the decision. Aspen unsuccessfully requested the Courts interim measures to suspend the order. In the meantime, Aspen refused to comply with the decision and delayed the renegotiation with AIFA, therefore, in March 2017, the Authority opened proceedings for non-compliance. Against the Authority's infringement decision Aspen also lodged an appeal which was rejected in July 2017 by the Administrative Court of First Instance.

3.2. Mergers and acquisitions

3.2.1. Statistics

46. In 2016, the Authority examined 52 merger transactions of which 46 cleared in Phase I, one dismissed for inapplicability of the merger law and three requiring a Phase II investigation, which all ended with a clearance subject to remedies (see next section). In two cases, the Authority also conducted proceedings for non-compliance with prior merger notification obligations (with the imposition of fines totalling €10,000)²³.

47. Furthermore, the AGCM imposed a fine of €374,000 on a merged entity for non-compliance with the remedies imposed by the AGCM when reviewing the transaction and required reporting obligations on the initiatives to comply with the remedies which were not implemented²⁴.

3.2.2. Summary of significant cases

48. In 2016, three concentrations were assessed in Phase II and all were approved subject to structural remedies.

Case C12017: RTI / Finelco

49. The notified concentration concerned the acquisition of Gruppo Finelco SpA, owner of the radio channels Radio Montecarlo, Radio 105, Virgin Radio, by RTI Reti Televisive Italiane, a company active in the radio and television industries controlled by Mediaset and belonging to the Fininvest RTI group.

50. In the Authority's view the notified transaction would create the strongest player in the radio advertisement market, insofar as the resulting entity would be able to cover an unparalleled range of users of both genders and across all ages. Moreover, the resulting entity could bundle its advertising services on Finelco's radio stations and RTI's TV channels, therefore foreclosing competitors in those segments. As a result, the AGCM argued that the proposed merger could have horizontal anticompetitive effects, in the market for radio advertisement collection, as well as conglomerate anticompetitive effects in light of Mediaset's position in the adjacent market of TV advertisement collection.

51. To address the competition concerns, the AGCM requested a set of measures, including the obligation by the Fininvest RTI group not to renew the contracts entered into with Radio Italia and Radio Kiss Kiss for radio advertisement management upon their expiry, the obligation to abstain from acquiring radio advertisement contracts or the property of other national radios until 2020 and the obligation to carry out the activities of

²³ Case No: C12031 - BCC ROMA-BANCA PADOVANA CC; Case No-: C12049 - BANCA PER LO SVILUPPO DELLA COOPERAZIONE DI CREDITO/BANCA ROMAGNA COOPERATIVA-CREDITO COOPERATIVO ROMAGNA CENTRO E MACERONE.

²⁴ Case No: C11072B - MOBY/TOREMAR.

television advertisement collection, on the one hand, and radio advertisement collection, on the other, through separate subsidiaries.

Case C12023: Arnoldo Mondadori Editore/RCS Libri

52. The proposed transaction concerned the acquisition of RCS Libri SpA by Arnoldo Mondadori Editore SpA. Both parties were major competitors in the Italian book publishing sector, characterised by a vertical integration in the entire publishing chain. The concentration involved several markets at different levels of the value chain, including the market for the acquisition of copyright licenses of Italian and foreign fiction and non-fiction books, the market for the publishing of fiction and non-fiction books and the publishing and distribution of e-books.

53. The AGCM noted that the transaction could result in the creation or strengthening of a dominant position in some of the affected markets. This would have enabled the resulting entity to impose more stringent commercial conditions to independent bookstores and to reserve a wider share of shelf space for its own products.

54. The AGCM gave conditional approval to the merger, subject to a set of measures, notably the obligation for Mondadori to divest the controlled brands Bompiani and Marsilio to buyers previously approved by the Authority. Other measures imposed Mondadori to waive the option, preference and pre-emption clauses in contracts with authors signed or to be signed by Mondadori and RCS Libri, to provide its e-book catalogue to platforms requesting it and to ensure the presence and visibility of books from third party publishing houses in Mondadori's sales network.

Case C12044 – A2A / Linea Group Holding

55. The notified transaction concerned the acquisition by A2A SpA of Linea Group Holding SpA. Both parties to the merger were active in the sector of urban waste processing.

56. The AGCM found that the transaction could strengthen A2A's dominant position in Lombardy's urban waste processing market. The Authority also noted that the resulting entity would have had an incentive to leverage its dominance in the upstream market of waste collection.

57. The transaction was cleared upon the parties' commitment to dismiss a waste-to-energy plant in Lombardy and to release processing capacity for waste production to third parties for a five-year period on favourable economic conditions.

3.3. Other activities and competences

3.3.1. Art. 8 obligations

58. Pursuant to Art. 8 of the competition law (no 287/90), competition rules do not apply to companies which, by law, are entrusted with the operation of services of general economic interest (SGEI) or operate on the market in a monopoly situation, only insofar as this is indispensable to perform the specific tasks assigned to them. These companies are not prevented from operating on other markets, but are subject to some constraints. In particular, they must operate through separate companies (Art. 8 (2) *bis*) and they must give prior notice to the AGCM if they intend to acquire or merge with companies active in other markets (Art. 8(2) *ter*). Finally, when they supply to their subsidiaries or controlled companies active on different markets goods/services over which they have

exclusive rights by virtue of their role, they have to make the same goods and services available to their direct competitors on equivalent terms and conditions, in order to guarantee a level playing field (Art.8 (2) *quater*).

59. In 2016, the Authority concluded one proceeding ascertaining the infringement of the law ascertaining the non-compliance with obligation of the firm's separation and of prior notification pursuant to art. 8(2) *bis* and *ter* of law no 287/90²⁵. The Authority imposed fines totalling €5,000.

3.3.2. Article 9 (3 bis), law no 192/1998 – Late payments in commercial transactions

60. In 2016, the AGCM adopted its first decision on a case of abuse of economic dependence. Article 9 of Law n. 192/1998 prohibits the abuse of economic dependence²⁶ and the Authority was empowered to enforce this provision since 2001. In implementing the Directive 2011/7/UE on combating late payment in commercial transactions, the Italian legislator extended Article 9 with paragraph 3bis, to make late payment an abuse *per se*, regardless of the economic dependence prerequisite.

61. In November 2016, the Authority fined Hera SpA, a company active in the sector of gas distribution, €800,000. Hera's abuse consisted of systematically delaying the payments due to its suppliers of gas meters, which were found to be in a weaker position because of their smaller size compared to Hera's significant presence in the gas distribution market. More specifically, the AGCM has ascertained that Heras' payments to its suppliers were systematically made after 120 calendar days instead of being made within the 60 calendar days term provided by Directive 2011/7/UE.

62. The amount of the fine was exceptionally reduced (compared to the original amount of € 3.2 million) in light of the fact that this was the first investigation for the Authority with regard to the allegation of an abuse of economic dependence through late payments.

4. The role of the competition authority in the formulation and implementation of other policies

63. The AGCM is endowed with extensive advocacy powers and tools to intervene in the legislative process. Pursuant to art. 21 of Law no 287/1990, the AGCM may notify Parliament, the Prime Minister, other relevant ministers, and the relevant local authorities of distortions arising as a result of existing legislative measures. At the same time, pursuant to art. 22 of Law no 287/1990, the Authority may express opinions on draft legislation or regulations and on problems relating to competition and the market whenever it deems this appropriate or whenever requested to do so by the government departments and agencies concerned. Furthermore, the AGCM has the power to carry out

²⁵ Case No: *SP158 - ALILAGUNA-SERVIZI DI TRASPORTO PUBBLICO LOCALE NELLA LAGUNA DI VENEZIA*.

²⁶ The notion of economic dependence refers to a situation where an enterprise holds significant commercial strength with respect to another particular enterprise, and is therefore different from the notion of dominant position, which refers to an enterprise's position with respect to the whole relevant market.

market studies when circumstances suggest that competition may be impeded, restricted or distorted in the marketplace (pursuant to Art. 12(2)).

64. Since 2011, the advocacy toolkit of the AGCM has been expanded and strengthened. Pursuant to art. 21-a, the AGCM may challenge before the Administrative Court any acts of the public administration sector which are incompatible with the competition law and the competition principles embedded in the primary legislation. With a similar intent, by acting ex-ante, the Authority is now regularly consulted by the Presidency of Council of Ministers (PCM) when the latter reviews the compatibility of the legislation passed by the Regions with national legislation and Constitution principles. Therefore, art. 21-a and the co-operation with the PCM are two ways for the AGCM to monitor the implementation at local level of liberalisation reforms approved by the central government. Finally, another important advocacy power at the Authority's disposal is the "Annual Law on Competition". According to a law enacted in 2009, every year the Government is asked to present to the Parliament a liberalisation bill, taking into account the opinions and the recommendations delivered by the AGCM in previous years²⁷.

4.1. Opinions and recommendations

65. In 2016, pursuant to Articles 21 and 22 of law no 287/90, the Authority issued 79 non-binding opinions and recommendations concerning competition restrictions deriving from laws in force or upcoming legislation to policymakers and public administration bodies. Opinions concerned a wide range of sectors as shown in the table below.

66. Moreover, in 2016, the co-operation continued between the AGCM and the PCM in assessing the conformity of draft regional legislation to the constitutional principles; the Authority issued 17 opinions to the PCM (pursuant to Art. 22), suggesting the challenge of regional laws in contrast with competition principles.

²⁷ See section 1.2 above.

Table 4. Reporting and advocacy activities, divided by economic sectors (number of interventions carried out in 2016 pursuant to art. 21 and 22)

Sector	2016
Energy	13
Electricity and gas	4
Mining	1
Oil industry	2
Waste disposal	6
Communications	16
Information technology	5
Telecommunications	5
Publishing	3
Electronic and electric raw materials	2
Radio & TV	1
Finance	3
Postal services	2
Insurance services	1
Food	8
Agriculture	1
Food and drink industry	3
Pharmaceutical industry	4
Transports	12
Transportation and hiring of means of transport	9
Means of transport	3
Manufacturing	1
Other manufacturing services	1
Services	26
Services (others)	15
Health services	3
Professional services	2
Leisure, cultural and sport activities	2
Catering	1
Tourism	2
Mechanical engineering	1
Total	79

67. Moreover, in 2016 the co-operation between the AGCM and the PCM in assessing the conformity of draft regional legislation to the constitutional principles has continued: the Authority issued 17 opinions to the PCM (pursuant to Art. 22), suggesting to challenge regional laws in contrast with competition principles.

68. In addition, pursuant to article 21-bis of law no 287/90, the AGCM issued 14 opinions (compared to 19 in 2015) to public administration bodies with the power of challenging their restrictive measures before the courts in case of non-compliance to the Authority's recommendations. As in previous years, this power of appeal of

administrative acts (introduced in 2012) was used in a very diverse group of economic sectors and in almost all cases the Authority's opinion was addressed to local administrations.

**Table 5. Reporting and advocacy activities, divided by economic sectors
(number of interventions carried out in 2016 pursuant to art. 21 bis)**

	Sector	2016
Energy		4
	Electricity and gas	1
	Waste disposal	3
Communications		2
	Information technology	2
Transports		3
	Transportation and hiring of means of transport	3
Services		5
	Health services	3
	Services (others)	2
Total		14

4.1.1. Description of significant advocacy interventions

69. Tenders for concessions to build and manage ultra-broadband network infrastructure

70. In May and August 2016, the Authority issued two opinions to the Ministry of Economic Development on tenders for concessions to build and manage ultra-broadband network infrastructure in market failure areas in six Regions²⁸.

71. In line with the recommendations of the 2014 broadband market study, the Authority advocated award criteria which would reward the bids which imply a greater degree of vertical separation. In particular, a scoring system that would enhance, among the different management models presented by the participants, those consistent with a pure wholesale model providing only infrastructure access services and thereby stimulating competition in retail markets and eliminating the risk of discriminatory conducts by the network operator.

72. In addition, the Authority advocated for a scoring system rewarding vertically integrated companies adopting an Equivalence of Input (EoI) equal treatment model, and those companies whose downstream business is carried by a separate subsidiary.

²⁸ See opinion no AS1301 - *BANDO DI GARA PER LA COSTRUZIONE, MANUTENZIONE E GESTIONE DELL'INFRASTRUTTURA DI RETE PASSIVA A BANDA ULTRALARGA NELLE AREE BIANCHE*, in Bulletin n. 37/2016; and opinion n. AS1302 - *DOCUMENTAZIONE INTEGRATIVA DEL BANDO DI GARA PER LA COSTRUZIONE, MANUTENZIONE E GESTIONE DELL'INFRASTRUTTURA DI RETE PASSIVA A BANDA ULTRALARGA NELLE AREE BIANCHE*, in Bulletin no 37/2016, available at: <http://www.agcm.it/bollettino-settimanale/8429-bollettino-37-2016.html>

Mobility services: long-haul bus transport services

73. In January 2016, the Authority issued an opinion to the Ministry for Infrastructure and Transport on the compatibility of the price setting methodology adopted by the new entrants in the recently liberalised sector of long-haul bus transport services²⁹.

74. In 2014, a new regime based on authorisation in the interregional passenger bus transport sector replaced the old exclusive concessions. In the first two years of full liberalisation, the sector underwent a profound transformation, with double digit increase in the number and frequency of routes, experienced in all regions and in particular in the northern ones where historically long-distance bus services were scarcely active. New companies like Flixbus entered the market by offering new transport services such as intercity services (i.e. long-haul bus transport services with only a few stops) and ancillary services (Wi-Fi, online booking etc.), at very competitive prices by exploiting the opportunities offered by digital platforms as well as dynamic pricing policies facilitated by the adoption of revenue management systems³⁰.

75. The Ministry for Infrastructure and Transport requested an opinion to the AGCM on the compatibility of the price setting methodology of some newcomers with the new liberalised framework. The request of the MIT stemmed from a complaint received by the Ministry from a bus company lamenting the application of flexible fares depending on the travel day and seat availability and promotional fares as low as 1 euro. This fare flexibility has generated concerns among the incumbents which were instead used to apply only the fares indicated in the license.

76. In its opinion, the Authority concurred with the Ministry in affirming that the requirement envisaged by the authorisation process was the indication of the applicable maximum fares and discounts to be attached to the license: according to the AGCM, art. 3 of the legislative decree no 285/2005 does not contain any reference to an ex-ante “approval” of fixed fares since following the liberalisation price is a competitive variable not subject to any regulatory constraint. Accordingly, fares and discounts can be freely set and adjusted according to travel time, seat availability or any other variable. The Authority noted that the pricing setting methodology of the newcomers is similar to those applied in other liberalised markets for passenger transport services (such as airlines, ferries and high speed trains) or in other markets related to the tourism industry (e.g. online hotel booking). As such, this dynamic pricing methodology could not be considered in itself as violating antitrust laws according to the Authority; potential competition concerns could be raised only in the presence of aggressive price predatory conducts implemented by a dominant operator and not replicable by an as efficient competitor.

Collective societies for management of the rights for online music services

77. In June 2016, the AGCM issued an opinion to the Parliament in relation to the guiding principles for the transposition of the Directive 2014/26/EU on collective

²⁹ See opinion no AS1256, *Servizi di linea interregionali di competenza statale*, available at: <http://www.agcm.it/segnalazioni/segnalazioni-e-pareri/open/C12563290035806C/286F2138CE8A357AC1257F4700531055.html>

³⁰ For more information, see the AGCM written contribution submitted for the 62nd meeting of the Working Part No. 2 on Competition and Regulation on 28 November 2016, available at the following link: [https://one.oecd.org/document/DAF/COMP/WP2/WD\(2016\)11/en/pdf](https://one.oecd.org/document/DAF/COMP/WP2/WD(2016)11/en/pdf)

management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market³¹.

78. The Authority first noted that the current national framework was not suited to incorporate the new provisions of the Directive which recognises the necessity to abandon the territorial fragmentation for the management of the rights for online music services. The obstacle was represented by art. 180 of law no 633 dated back to 1941, which established the exclusive right for the state-owned company SIAE to intermediate these services, preventing any other companies from operating in Italy. The AGCM pointed out that at the core of the Directive lies the freedom of choice, namely the right of the right-holder to identify and appoint a collective management body irrespective of its nationality, residence or establishment. Therefore, the Authority outlined how the transposition of the Directive could be an opportunity for an overall reform of the sector.

79. In light of the above, the AGCM urged the Italian legislator to identify criteria for the implementation of the Directive, capable of promote competition among a plurality of collecting societies established in Italy while ensuring adequate protection of rights holders. However, this liberalisation could only be achieved with a revision of the legal monopoly of SIAE, i.e. the role and functions attributed to SIAE in today's world of radical technological changes.

Proposed law on sharing economy

80. In July 2016, the Authority was invited to comment on the draft bill setting up a cross-sector framework for the sharing economy. The draft legislative initiative was presented by the Parliamentary Intergroup on Innovation³². It is unlikely that the sharing economy bill will be thoroughly discussed and approved by the end of the current legislature.

81. The objectives of the legislative initiative were twofold: to encourage and guide the sharing economy and to guarantee transparency, tax fairness, competition and consumer protection. In particular, the draft law also contains requirements for platforms, including increased transparency towards platform users. From a competition perspective, the framework plans for, among other things, a self-regulation approach for platforms³³ and a black list of contractual clauses that platform operators may not impose on the providers of services through their platforms³⁴.

³¹ See opinion *No ASI281, Gestione collettiva dei diritti d'autore e dei diritti connessi e concessione di licenze multiterritoriali per i diritti su opere musicali per l'uso online nel mercato interno*, available at: <http://www.agcm.it/segnalazioni/segnalazioni-e-pareri/open/C12563290035806C/8057625762E65E85C1257FCA0061EC00.html>

³² See for instance bill no 3564 submitted to the Deputies Chamber, available here: <http://www.camera.it/leg17/126?tab=2&leg=17&idDocumento=3564&sede=&tipo=>. For a description in English language see: http://www.veronicatentori.it/wp-content/uploads/2016/03/ENG_Presentazione-Sharing.pdf

³³ Platform operators would be requested to adopt a policy detailing registration methods, payment systems for money transactions, criteria of reputational classification systems, contractual terms and conditions between the platform and users and information about the necessary insurance covers.

³⁴ The list includes: forms of exclusive or preferential treatment in favour of the platform operator; the control of the performance of the service providers, including through hardware or software; the setting of compulsory rates on behalf of the service providers; the exclusion from access to the

82. The Authority raised some concerns with respect to the proposed black list of clauses in the contractual relationship between the platform operator and the service providers; although the intent was to protect the both side of the platform users (consumers and service providers), the application of the black list could have undermined, in the AGCM view, the possibility to fully reap the benefits of the sharing economy, with the risk of interfering with the business model of platform operators. Indeed, in the course of the parliamentary hearing, the Chairman of the Authority underlined that a cornerstone of the sharing economy is the presence of the peer reviewing and peer monitoring tools which, when working properly, provide a solid argument for self-regulation as a preferential approach to these novel forms of markets. Furthermore, any concern on the protection of the “consumer” side of the platform could be addressed by the existing consumer protection legislation whose enforcement is also entrusted to the AGCM.

4.2. Monitoring of advocacy and reporting activities

83. Since 2013 the Authority has systematically monitored and assessed the effectiveness of its advocacy efforts. Every six months, a detailed analysis is undertaken to assess the outcome of the Authority’s opinions and recommendations in terms of compliance. Data are broken down by type of advocacy tools used, public administration involved (central versus local), source of the opinion (ex-officio or originated by a complaint or request) and economic sector involved. This exercise allows the Authority to closely verify the effectiveness of its advocacy interventions and to have a better understanding of the key factors that make competition advocacy successful.

84. The results for the period 2015-1st semester of 2016 suggest that the Authority’s interventions proved to be positive overall, considering that in the majority of cases there was a positive answer to the Authority’s suggestions³⁵. In particular, on an overall of 147 opinions, the success quota obtained was 55%, with a 36% of fully positive results and a 19% of partially positive results.

85. In analysing the results with respect to the different types of intervention it is worth noting that the outcomes are different depending on whether AGCM’s opinion was requested by a local or central governmental administration or if the Authority issued the opinion *ex officio*. In particular, as remarked in past evaluations, non-binding opinions and recommendations pursuant to art. 21 produced results not completely satisfying, while reports issued pursuant to article 22, in particular when the intervention was requested by the administration, delivered satisfactory results in terms of compliance by the requesting authorities. In the period of reference, comparing the results with previous analysis, the Authority registered a significant improvement in the success quota of interventions pursuant to art. 22, issued *ex officio*. Positive results increased from 46% to 56%, confirming the effectiveness of the Authority’s policy of identifying, according to efficiency and usefulness criteria, the cases more deserving of an intervention.

platform or the downgrading of the offer to users for unjustified or discriminatory reasons; the obligation to promote the platform operator’s services; the prohibition of any criticism to the platform operator’s. To both sides of the platforms (provider and user): ban on sharing any information, data and analysis; the obligation to provide the consent to share with any third party any user data.

³⁵ An English version of the report is available at the following link: <http://www.agcm.it/monitoraggio-advocacy.html>

86. The opinions issued according to art. 21 *a* and the reports pursuant to art. 22 issued on request of the PCM resulted both, for a little less than 50% of the total instances, in positive results.

87. In particular, in 2015 and the first semester of 2016, the following success quotas were recorded, with reference to four categories of intervention:

- the success rate of opinions issued pursuant to art. 21 was 27% in the overall of cases (13% positive results, 14% partially positive);
- the success rate of advocacy interventions made pursuant to art. 22 was, in the overall of cases, 70% (38% positive results, 32% partially positive);
- the success rate of reports issued pursuant to art. 21*a* was 41% for all cases (out of the outcome of the legal controversy currently underway);
- the success rate of opinions issued pursuant to article 22 following a request by the PCM was 46% of all cases.

88. As for sector division, the majority of interventions were focused on transports, other services provision, energy and environment, which report in the overall for 49% of all advocacy activities. This data confirms what already noted in previous evaluations, continuing a trend present as of 2013, when the monitoring was firstly implemented.

4.3. Market studies

89. In 2016, the Authority concluded five market studies focused on the following sectors: solid waste management, local public transport, milk supply chain, vaccines for human use and audio-visuals. In particular, the market studies on waste management and public transport were meant to contribute on an informed basis to the ongoing reforms carried out by the Italian Government.

90. In January 2016, the AGCM concluded an in-depth analysis into the structure and characteristics of the entire supply chain of **urban waste management services**³⁶. The market study intends to contribute to the evolution of the sector in light of the new principles of Extended Producer Responsibility and Polluter Pays Principle introduced by the EU legislation. The inquiry pointed out excessive and uncritical recourse to in-house providing of the management of urban waste management services by local administrations. Such contracts are often awarded for lengthy periods, not justified by efficiency considerations (e.g., the recoupment of the investments). Even when the service was awarded through tendering procedures, the size of waste collection areas often tended to prevent efficiency gains. This factor, in some cases associated with restrictive clauses in the tender notice, discouraged participation by potential bidders. Furthermore, competition issues arise from restrictive regulations in the downstream stages of mixed waste collection, as well as in the current fragmentation of regulatory powers among a number of local entities and the resulting lack of co-ordination amongst them.

91. Taking into account good practices in other jurisdictions, the AGCM proposed a comprehensive reform of the sector, along the following lines: i) in-house providing should be subject to the achievement of efficiency benchmarking; ii) the duration of the contracts should be limited by law to no more than five years; iii) the waste collection

³⁶ See the English version of the press release, available at: <http://www.agcm.it/en/newsroom/press-releases/2303-ic49-investigation-on-the-urban-waste-market-less-dumps-more-separate-collection.html>

areas should be expanded (by aggregating several small municipalities) or reduced (by partitioning big municipalities) so as to foster efficiency and encourage participation in the tender procedures; iv) a model based on competition between different forms of separate collection should be introduced and the current packaging collection consortium, based on a substantial monopoly, should evolve into competition among packaging producers; v) the regulatory fragmentation should be replaced by the centralised technical model, possibly managed by the sector regulator.

92. In June 2016, the AGCM published a market study on **local public transport**, whereby it suggested an overhaul reform of the institutional framework and regulation³⁷. The inquiry revealed serious structural unbalances in the sector in Italy, such as insufficient investments in infrastructures, an obsolete fleet and significant territorial divides. As a result, despite relevant public expenditure, no equal access to local public transport services has been provided, nor effective policies have been undertaken to develop sustainable mobility. Furthermore, Regions' and local bodies' planning resulted inaccurate, leading to a paradoxical situation where the demand often remains unsatisfied, despite an oversized supply of services.

93. In the AGCM's view, many of these deficiencies stem from a lack of competition. In particular, the current regulation has hindered competition both "for" the market (based on calls for tenders for appointing the management of services) and "in" the market (based on services supplied by various companies along the same lines, which can lead to more services and better quality without neglecting the protection of the weaker categories). Moreover, various factors have discouraged the recourse to calls for tenders, including the absence of mechanisms capable of rewarding service providers on the basis of actual results and the conflicts of interest whenever the local body owns the service provider. In the light of international best practices, the AGCM urged a set of co-ordinated measures, including: a leap in services planning quality of; the systematic use of calls for tenders comprising mechanisms aimed at investing administrations with responsibility, acknowledging the most virtuous ones when allocating public funds; improved calls for tender that enable broader participation while addressing the issue of conflicts of interest by centralising the awarding function to a single body at a national level; increased competition "in" the market.

5. Resources of competition authorities

5.1. Resources

5.1.1. Annual budget

94. The Italian Competition Authority does not have a specific competition-related budget. The overall expenditure incurred in 2016 amounted to € 55.2 million. The overall expenditure figure also includes costs for non-competition competences (concerning unfair commercial practices, misleading and comparative advertising, conflicts of interest, unfair contractual clauses and legality rating).

³⁷ For more information, see the English press release, available at the link: <http://www.agcm.it/en/newsroom/press-releases/2307-ic47-ica%E2%80%99s-investigation-into-the-local-public-transport-%E2%80%9Cmore-competition-to-improve-services%E2%80%9D.html>

95. Pursuant to Law Decree no 1/2012, the Italian Competition Authority funding system is based on a mandatory contribution for companies incorporated in Italy whose turnover exceeds a threshold of EUR 50 million. The contribution, originally fixed at 0.06 per thousand, has been gradually lowered by the AGCM to the current level of 0.059 per thousand, set in March 2017. The revenues from this contribution replace all previous forms of funding (merger fees and public budget).

5.1.2. Number of employees

96. The total staff of the AGCM at the end of 2016 was 283. This includes all human resources working for the Authority, also in non-competition areas (concerning unfair commercial practices, misleading and comparative advertising, conflicts of interest, unfair contractual clauses and legality rating).

97. 121 officers work on competition (25 as support staff and 96 as non-administrative staff). The non-administrative staff is composed of 53 lawyers, 38 economists and 5 other professionals.

5.2. Authority's Board

98. As of March 8, 2016, Professor Michele Ainis was appointed as a member of the Board of the Italian Competition Authority, replacing Salvatore Rebecchini. The other members of the Board are Chairman Professor Giovanni Pitruzzella and Gabriella Muscolo.