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This report is submitted by Italy to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 27-28 November 2018.

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1. Executive Summary

1. This report covers the enforcement and advocacy activities performed in the past calendar year (1 January 2017 to 31 December 2017) by the Italian Competition Authority (hereinafter 'the Authority' or 'the AGCM'), which is the agency responsible for enforcing competition law in Italy. Where appropriate, it also highlights significant developments up to September 2018.

2. With regard to the **enforcement of cartel legislation**, the Authority ascertained the existence of five cartels, imposing € 350 million in fines (a 43% increase compared to 2016): most of these sanctions were imposed in two traditional cartel cases concerning basic industries (cement and reinforcing bars for concrete), a signal that crisis cartels ought not to be justified in any circumstance. Another important case concerned the public procurement sector, with the "big four" consultancy firms sanctioned for bid-rigging in a tender worth € 60 million for support and technical assistance services to public administrations in the management of EU funds.

3. With a view to improving the detection of bid rigging, two MoUs were signed in January 2018 with the main Public Prosecutors of Rome and Milan, marking a further step in the fruitful **cooperation with the judiciary.** The AGCM also strengthened its cooperation with other national institutions, such as the Anti-Corruption Authority (ANAC), procurement bodies and sector regulators. The new guidelines on Italian Public Contract Law issued by ANAC include cartel violations among the possible grounds for exclusion of an undertaking from a tender.

4. The enforcement initiatives were complemented by renewed commitment vis-à-vis **abuses**. In two decisions, the AGCM clarified the conditions under which loyalty rebates and exclusivity clauses by dominant firms can constitute competition infringements. It imposed a € 60.6 million fine on Unilever for using exclusive clauses and other arrangements to foreclose the wholesale distribution of packaged ice-cream. In another case, after using the "as-efficient-competitor" test, the AGCM fined the incumbent postal operator Poste Italiane for squeezing competitors' margins and offering loyalty rebates to customers in the market for bulk mail delivery.

5. In the field of **merger reviews**, the Authority reviewed 64 mergers and investigated in-depth two major mergers (in the publishing/advertising and cement sectors) which were cleared with a combination of structural and behavioural remedies to resolve competitive concerns.

6. Judicial reviews also yielded significant results, as almost all AGCM decisions reviewed by the Courts in 2017 were upheld. These positive results reward AGCM's engagement in accurate economic analysis and continuing attention to due process.

7. 2017 was a period of intense **competition advocacy** for AGCM (129 recommendations and opinions), also due to the new responsibility assigned in 2016 pursuant to the law on the rationalisation of state-owned enterprises. In particular, the Authority intervened against the introduction of de facto minimum tariffs in legal professions and called for a plan to finalise the liberalization process in retail energy markets.

8. With a view to amplifying its advocacy, the AGCM has fostered its **cooperation with other regulators**. Together with the Transport Regulator and the Anti-Corruption Authority, the Authority issued a comprehensive opinion urging for increased "competition for the market" in regional rail transport. More generally, the AGCM's

regular **monitoring of competition advocacy** shows that 53% of overall opinions issued in the period 2016 –2017 were successful (73% in case of draft legislative of administrative acts), particularly in services, transport, waste management, health and tourism.

9. In the **digital economy**, and in particular in the **sharing economy**, the AGCM repeatedly advocated the prevention of measures that would undermine the growth of innovative services, such as measures applying obsolete regulations (e.g., in non-scheduled passenger transport services) or introducing new restrictive regulations (e.g., in home restaurant services). For the first time, in April 2017, the AGCM intervened as *amicus curiae* before a Civil Court against a ban on UberBlack services. In May 2017, it launched a **joint sector inquiry into big data** with the Data Protection Agency and the Telecommunications Regulator, acknowledging that the analysis of the use of Big Data requires a multidisciplinary approach. In June 2018, the Authority published an interim report showing the results of a survey on consumer awareness and attitudes towards the collection of personal data.

10. Finally, as recommended by the OECD, the Authority made its annual estimate of the **impact of its competition enforcement actions**, based on the methodology developed by the OECD; according to this exercise, the benefits for consumer welfare in 2017 were quantified at around € 784 million (the 2016 figure was € 597 million,) of which € 502 million from anti-cartel enforcement alone.

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

11. In August 2017, Parliament approved for the first time the annual law on competition (Law no 124/2017), based on a government proposal inspired by recommendations made by the AGCM in previous years[1]. The law introduced measures in several sectors, including regulated professions, insurance, telecommunications and the electricity and gas sectors. Its adoption can be considered a step forward in the promotion of pro-competitive regulation within the national economy (see the 2016 Annual Report for more information).

12. In terms of implementation of the annual law on competition, there was significant progress in the car insurance sector, fuel distribution and retail banking services. However, secondary legislation is still required in other areas addressed by the law, in particular with regard to the liberalization of the retail energy markets. On the basis of a monitoring report issued by the sector regulator, the government was supposed to present a draft decree outlining important measures to complete the liberalization for households.

13. After the approval of the annual law on competition, in late 2017, various regulatory measures were introduced that, in many respects, mark a retreat on several

[1] 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 including 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.

fronts - and in some cases restoration - in relation to the even partial pro-competitive measures introduced by the 2017 annual law on competition. This refers in particular to the 2018 Budget Law (Law no. 205/2017).

14. First of all, the Budget Law introduced legal monopoly and exclusivity in several markets: for instance, in motorway concessions, the reduction to 60% (compared to the previous limit of 80%) of the orders that must be acquired through public tender procedures; in the intermediation between sports professionals and sports clubs, the establishment of a Sports Agent Register, which has exclusivity and whose fees will be set according to criteria yet to be established.

15. The Budget law also reformed sectors that were partially covered by the 2017 annual law on competition. In the notary profession, the increased number of potential notaries (from 1 every 7,000 to 1 every 5,000) and the extended geographic scope of their activities (possibility of opening a second office within the region in which the notary is established) were offset by the introduction of a de facto competition law exemption for certain acts undertaken by the Notary Councils in their surveillance duty. In May 2018, the Authority challenged this legislative measure before the Constitutional Court, within the context of a pending case concerning an alleged anti-competitive agreement of the Notary Council of Milan. As the competence to seek the constitutional review of legislative acts is restricted to the Courts, such referral posits the quasi-judicial nature of the AGCM. The decision is pending: a positive ruling of the Constitutional Court on this issue would strengthen considerably the Authority's enforcement and advocacy powers on a national level.

16. In the postal services sector, the liberalization of the services of notification by post of judicial documents may be slowed by the introduction of a new regulation on the points of storage that may affect the entry of new operators into the market; in addition, the Budget Law also extended the perimeter of the universal service, reserving postal items up to 5 kg to the incumbent Poste Italiane.

17. Moreover, the Budget Law postponed the launch of public tender procedures in many areas by extending existing contracts (public parking slots) and delayed the liberalization process in certain sectors: for instance, it extended to December 2018 the deadline for the government to present a new regulatory framework for non-scheduled transportation services, including taxi and private-hire vehicle services, as well as the new services provided via web apps using technological platforms to connect passengers with drivers.

18. Finally, in the area of public procurement, there was an important development in the implementation of the Italian Public Procurement Code, concerning the circumstances in which a contracting authority may exclude an economic operator from a tender. In 2017, the Italian Anti-Corruption Authority (ANAC) updated its guidelines and established that contracting authorities may exclude undertaking(s) that are charged with infringement decisions of the AGCM. The ANAC guidelines specify that the AGCM infringement decision must be final, i.e., as confirmed or reviewed by the Courts and that the antitrust violation must occur in the same sector in which the illegal conduct ascertained by the AGCM in its executive decision was committed.

3. Enforcement of competition laws and policies

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

3.1.1. Summary of activities

19. In 2017, the Authority closed ten investigations concerning anticompetitive agreements, including cartels, assessed twelve cases of abuse of dominant position, investigated two in-depth mergers and revised merger remedies in one case.

Table 1. Activity of the Authority

	2016	2017
Anticompetitive agreements (incl. cartels)	7	10
Abuse of dominant position	3	12
Merger transactions examined	52	64
Separation obligations	1	-
Sector inquiries	5	-
Non-compliance with the decision	3	-
Non-compliance with prior notification obligations	2	-
Recalculation of fines	1	1

Table 2. Proceedings concluded in 2017, divided by type and outcome

	Non-infringement of the law	Infringement of the law, acceptance of commitments, revision of commitments	No jurisdiction or inapplicability of the law	Total
Anticompetitive agreements (incl. cartels)	2	6	2	10
Abuse of dominant position	1	10	1	12
	Clearance	Prohibition, authorization subject to remedies, revision of remedies	No jurisdiction or inapplicability of the law	Total
Mergers of independent enterprises	54	3	7	64

20. In terms of judicial reviews, in 2017, six out of seven decisions were upheld fully or partially by the TAR of Lazio (Court of First Instance). In the same period, three out of four decisions were upheld fully or partially by the *Consiglio di Stato* (Supreme Administrative Court).

Agreements

21. In 2017, the Authority concluded ten investigations, establishing infringements in five cases: four concerned violations[2] of art. 101 of the Treaty on the Functioning of the

[2] Cases N. I794-ABI/SEDA, case N. I742-TONDINI PER CEMENTO ARMATO, Case N. I793-AUMENTO PREZZI CEMENTO, I796-SERVIZI DI SUPPORTO E ASSISTENZA TECNICA ALLA PA NEI PROGRAMMI COFINANZIATI DALL’UE.

European Union (TFEU) and one[3] a violation of the equivalent provision of the Italian Competition Law (art. 2 of Law no 287/90[4]); overall, the Authority imposed fines totalling € 350,758,569. In three cases, the relevant business association played a key role in the cartel organization and operation[5].

22. In two instances, involving car insurance and long haul car rental markets, the Authority closed the investigation with a non-infringement decision since the evidence gathered was considered insufficient to corroborate the allegation made in the decision opening the proceedings[6]. The remaining three investigations were closed for either non-applicability of the law or revision of commitments previously imposed.

23. Twelve investigations were still under way as at 31 December 2017.

Table 3. Agreements examined in 2017, according to economic sector (proceedings concluded)

Main sector involved	
Finance/Banking	3
Basic industry	2
Insurance and pension funds	1
Professional services	1
Other services	1
Leisure and cultural activities	1
Transport	1
Total	**10**

Abuses of dominant position

24. In 2017, the Authority concluded twelve investigations concerning abuses of dominant position. In five cases, the proceedings confirmed the infringement of art. 102 of the TFEU or the national equivalent[7] and the Authority imposed fines totalling € 93,357,522; in the other five cases, the Authority concluded the investigations accepting the commitments proposed by the firms under investigation[8].

[3] Case N.: I797-CONSIGLIO NOTARILE DI ROMA, VELLETRI E CIVITAVECCHIA/DELIBERA IN TEMA DI DISTRIBUZIONE DEL LAVORO NELLA DISMISSIONE PUBBLICA.

[4] The English version of Law no. 287/1990 is available on the AGCM website.

[5] Cases N. I794-ABI/SEDA, case N. I742-TONDINI PER CEMENTO ARMATO, Case N. I793-AUMENTO PREZZI CEMENTO.

[6] Cases N.: *I802-RC AUTO* and *I791-MERCATO DEL NOLEGGIO AUTOVEICOLI A LUNGO TERMINE*.

[7] Cases N.: *A484-UNILEVER/DISTRIBUZIONE GELATI, A500A-VODAFONE-SMS INFORMATIVI AZIENDALI, A500B-TELECOM ITALIA-SMS INFORMATIVI AZIENDALI, A493-POSTE ITALIANE/PREZZI RECAPITO; A503-SOCIETÀ INIZIATIVE EDITORIALI/SERVIZI DI RASSEGNA STAMPA NELLA PROVINCIA DI TRENTO.*

[8] Cases N.: *A490-SOFTWARE PROCESSO CIVILE TELEMATICO, A489-NUOVO IMAIE-CONDOTTE ANTICONCORRENZIALI, A498A-ENEL/PREZZI SERVIZI DI DISPACCIAMENTO AREA BRINDISI, A495-GARA TPL PADOVA, A499-ASSICURAZIONI AGRICOLE/COMPORTAMENTI ESCLUDENTI CODIPRA..*

25. *The AGCM* also adopted **interim measures** from the outset in an investigation concerning a dominant local newspaper company that refused to deal with an operator active in the downstream market for press cuttings services by not licensing its rights (see section 2.1.3)[9].

26. As at 31 December 2017, seven proceedings were pending.

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

Case N. I793 - cement cartel[10]

27. In July 2017, the AGCM closed proceedings against eleven undertakings active in the supply and sale of grey cement (holding an overall 85% of the market), one distributor and the trade association AITEC, imposing a fine of € 184 million for a price-fixing cartel, in breach of Article 101 TFEU. The investigation was prompted by a customer complaint in 2014, after the undertakings concerned simultaneously raised the price of cement by the same amount.

28. According to the Authority, the undertakings concerned coordinated their commercial policies on the national market of production and sale of bagged and loose grey cement, from at least mid-2011 until the beginning of 2016. In particular, the undertakings concerned colluded on prices by issuing customer price lists in a coordinated manner (same content and issue date), exchanged sensitive information with the support of trade association AITEC, ensuring the overall implementation of the price increases announced by the cement manufacturers.

29. More specifically, the evidence gathered during the investigation outlined the role of the trade association in collecting data on the deliveries of cement on the national territory per macro-areas and then sharing with its members accurate statistical reports with the aim of monitoring market shares. Therefore, according to the AGCM, AITEC helped the undertakings concerned to obtain up-to-date information about volumes of cement delivered to each area of the country in order to monitor relevant market positions. Furthermore, the Authority found that the actions of the cartel had significant effects on the market, maintaining the margins and market shares of the cartelists despite a period of severely reduced demand.

30. In setting the fines, the Authority considered certain mitigating factors, such as the effects of the 2007 financial crisis on the construction sector and the adoption of compliance programmes. The Authority also imposed a fine on cement distributor TSC for distributing price lists to other producers, despite the company not being active on the relevant market.

31. The infringement decision was challenged before the Court of First Instance, which rejected the appeal in July 2018.

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[9] See AGCM Decision of 20 December 2017, Case A503 - *SOCIETÀ INIZIATIVE EDITORIALI/SERVIZI DI RASSEGNA STAMPA NELLA PROVINCIA DI TRENTO*.

[10] See AGCM decision in Case *No. I793 - AUMENTO PREZZI CEMENTO*, published in AGCM Bulletin n.31/2017, and available on the AGCM website.

Case No. I742 on a cartel in the supply of concrete reinforcing bars and welded steel mesh[11]

32. In March 2017, the Authority issued an infringement decision against several undertakings active in the supply of concrete reinforcing bars and welded steel mesh, for the breach of Article 101 TFEU, consisting of a price fixing cartel in the supply of these products to traders and shapers in the Italian market. Overall, it imposed € 140 million in fines. According to the AGCM, the undertakings concerned were all part of a single, complex and continuous infringement from 2010 to the beginning of 2016, with regular meetings taking place both within (i) the association Nuovo Campsider and (ii) the "Price Commission" of the CCIAA (Chamber of Commerce) in the municipality of Brescia.

33. Almost all Italian steelworks are represented in Nuovo Campsider, whose monthly meetings, according to the evidence gathered, provided the opportunity to examine the prices paid by members in the preceding month for their main production input (whose costs on average affected 60% of the price of the final product); on the basis of this information, the association would regularly publish average prices for the input. In the monthly meetings, members also used to exchange sensitive information on the main input competition variables and the state of the stock and the production capacity deployed.

34. In the "Price Commission" the undertakings concerned would meet twice a month to collect minimum and maximum prices of several steel products, including reinforcing bars and welded steel mesh, applied in the preceding fifteen days by its members, with the "Price Commission" subsequently publishing average figures on its Bulletin and online. In addition, according to the Authority, during the same meetings the undertakings would exchange prospective prices to be applied by all Italian producers until subsequent notice. The investigation found that the most representative members of the Commission would formally submit to the Commission their (confidential) price lists: the latter were subsequently adopted and approved by the Commission, and published on the same Bulletin.

35. In June 2018, the Authority's infringement decision was successfully challenged before the Court of First Instance by the undertakings involved.

Case no. I796 concerning bid-rigging in the market for support services and technical assistance to public administrations in the management of EU funds 12

36. In October 2017, the AGCM closed an investigation against the main audit and consulting firms by imposing an overall fine of € 23 million for big-rigging in a tender, issued by the government procurement agency Consip, for support services and technical assistance to public administrations in the management, certification and audit of funds co-financed by the EU. The undertakings concerned belong to the worldwide networks Ernst&Young, KPMG, PWC and Deloitte. The tender's lots were collectively valued at € 66.5 million.

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[11] See AGCM decision in Case *No. I742 – TONDINI PER CEMENTO ARMATO*, published in AGCM Bulletin n. 30/2017, and available on the AGCM website.

[12] See AGCM decision in Case *No. I796 – SERVIZI DI SUPPORTO E ASSISTENZA TECNICA ALLA PA NEI PROGRAMMI COFINANZIATI DALL'UE*, published in AGCM Bulletin no. 43/2017, and available on the AGCM website.

37. The investigation was launched after Consip reported the bids received from the firms to the AGCM, having noticed patterns among high and low offers, and that each lot included a single highly discounted bid from one of the four bidders.

38. The Authority concluded that the parties coordinated at network level the economic offers in order to ensure the allocation of the Consip tender lots among themselves. During the investigation, the Authority found evidence of anomalous bidding behaviour by the parties (e.g., cover bids) and evidence of contact between them (e.g., arrangement of meetings to discuss issues related to the Consip tender, and also documents showing simulations of the allocation of lots prior to the tender).

39. The infringement decision has been appealed before the Court of First Instance.

Case N. I797 – on price-fixing and customer sharing agreements in the market for notary services in relation to public real estate deals[13]

40. In May 2017, the Authority issued an infringement decision against the Notary Council of Roma/Velletri/Civitavecchia District and a local association of notaries specialized in real estate services (ASNODIM), for an alleged price-fixing and customer sharing agreement in the market for notary services connected with the government's divestiture programme for public real estate located in the above-mentioned District.

41. The AGCM contested a 2016 deliberation of the Notary Council whereby it drafted a plan that assigned to individual notaries the services related to sale of the properties (e.g. mortgages) and established uniform and compulsory fees, thereby limiting the economic freedom of the notaries and precluding the possibility of freedom of choice of notary for prospective buyers in the District.

42. During the investigation, it emerged there was no normative provision attributing to the Notary Council the exclusive and binding role of organizing the notary services related to the divestiture programme in the Roma/Velletri/Civitavecchia District. Furthermore, it was found that the Notary Council and ASNODIM implemented additional measures restricting the economic freedom and initiative of individual notaries in the District, including a monitoring system to detect and sanction any deviation from the designed plan, in particular with regard to fees.

43. The investigation also unveiled a monetary compensation scheme within ASNODIM in order to neutralize potential discrepancies in the distribution of the notary services among the notaries in the District, thus eliminating any incentive to compete on fees. The investigation also found evidence of negative effects of the anti-competitive agreement in terms of higher fees and lack of choice of the professional.

44. In June 2018, the Court of the First Instance rejected the appeal of the undertaking concerned.

[13] See AGCM decision in Case N. *I797-CONSIGLIO NOTARILE DI ROMA, VELLETRI E CIVITAVECCHIA/DELIBERA IN TEMA DI DISTRIBUZIONE DEL LAVORO NELLA DISMISSIONE PUBBLICA,* published in AGCM Bulletin no. 24/2017, and available on the AGCM website

3.1.3. Description of significant cases regarding the abuses of dominant position

Case No A484 on exclusivity provisions and fidelity rebates on the wholesale distribution of packaged ice cream[14]

45. In October 2017, the AGCM closed an investigation against the Italian subsidiary of Unilever by imposing a € 60 million fine for abuse of dominance in breach of Article 102 TFEU in the relevant market for the distribution of single-wrapped impulse ice cream in the so-called out-of-home channel (snack bars, beach resorts, petrol stations, etc.). The investigation was launched in 2015, after a complaint lodged by a small Italian fruit ice lolly producer named “La Bomba”, on certain exclusivity provisions and fidelity-inducing rebates applied by Unilever to its retail clients.

46. Unilever was found to hold a dominant position, in light of several factors: a market share of over 60%, four times higher than the second largest competitor and growing over the past five years; high brand reputation; considerable product portfolio in terms of breadth and depth; and a widespread and extensive distribution network.

47. According to the Authority, Unilever abused its dominant position in the relevant market by applying to its customers (i.e., retailers and distributors) a complex mix of contractual obligations and commercial behaviour resulting in a foreclosure effect. They included: i) exclusivity obligations, de jure or de facto (single-branding and freezer cabinet exclusivity); and ii) fidelity inducing rebates (e.g., retroactive rebates, target rebates, portfolio rebates, end-of the year rebates). In addition, according to the AGCM, the foreclosure effect of these practices was further amplified by: i) the long duration of the agreements (in many cases longer than two years, with automatic renewal); ii) a selective application of the exclusivity-inducing conditions to retailers most exposed to competition; and iii) the fact that discounts were also granted to trade associations of its retail customers, with the precise objective of inducing them to monitor the commercial activity of their members and, in particular, their compliance with the exclusivity provisions.

48. According to the AGCM, Unilever used exclusivity obligations mainly to exclude single-product competitors such as the complainant while multi-year contracts, fidelity rebates and other payments were used to foreclose competitors selling full range of ice cream products.

49. During the investigation, Unilever submitted an as-efficient-competitor-test aimed at demonstrating that the fidelity rebates applied to retailers had no real foreclosure effects since ‘as efficient’ competitors could replicate them. However, the AGCM found that in the case in question, any quantitative analysis aimed at measuring the ability of Unilever’s competitors to replicate its rebates and discounts was not relevant since Unilever’s commercial policy was not based on purely pricing practices such as rebates and discounts. The Authority found that Unilever commercial policy was rather based on a complex mix of practices (such as long-term exclusivity agreements and monitoring activities) which could not be adequately captured and measured by an as-efficient-competitor test or by a similar economic analysis. As a result, the exclusionary effect of Unilever’s commercial policy was considered independent from the fact that its rebates

[14] See decision of Case No *A484 - UNILEVER/DISTRIBUZIONE GELATI*, published in the AGCM bulletin no. 47/2017, available on the AGCM website.

were not replicable by its competitors, since the exclusionary effect derived, according to the AGCM, from the targeted way Unilever implemented its complex mix of single-branding obligations and fidelity rebates.

50. The Authority conducted further analysis, following the ECJ judgment on Intel, in order to confirm the capability of Unilever commercial policy of foreclosing competition. In particular, the AGCM considered the following elements: i) Unilever had an absolutely predominant role on the market, in terms of markets share (60% both in volume and in value), presence in the most strategic areas, type of clients, brand reputation; ii) the exclusivity clauses covered 30%-40% of the relevant market; iii) the duration of the contracts entered into by Unilever was on average longer than two years; iv) the exclusivity clauses, the incentives to maintain the exclusivity and the further conduct aimed at monitoring their application had been targeted at the single clients and to specific competitors considered from time to time capable of eroding Unilever's sales; and, v) all conducts implemented by Unilever formed part of a strategy intentionally aimed at obstructing competitors' presence on the market.

51. The infringement decision was upheld by the Court of First Instance in May 2018.

Case No A493 - on margin squeeze and fidelity rebates in bulk mail delivery15

52. In December 2017, the Authority issued an infringement decision against the incumbent postal operator Poste Italiane S.p.A. for a breach of Article 102 TFEU, with the effects of hindering its competitors in the downstream market of bulk mail (i.e. large amount of mail sent by banks, insurance companies, utilities, etc.).

53. Poste Italiane is a vertically integrated firm, active in both the downstream market, by providing delivery services to banks, insurance companies, utilities etc., and the upstream market, by providing delivery services to alternative postal operators (Poste Italiane's competitors) in the areas not covered by their postal network. The Authority's investigation found that Poste Italiane was dominant in both the upstream and downstream markets for bulk mail delivery. Despite the liberalization of the market for bulk mail delivery in 2011, the former monopolist Poste Italiane still owns much of the infrastructure required to deliver mail, especially to rural areas. To deliver bulk mail in areas not served by their own postal networks, competitors can only rely on the incumbent infrastructure which therefore represents an input for the delivery.

54. The Authority's investigation found that Poste Italiane abused its dominance in the market for bulk mail delivery by operating a "complex" exclusionary strategy that included squeezing competitors' margins and offering loyalty rebates to customers. The Authority's findings were also supported by quantitative analysis confirming the fact that as efficient competitors were unable to replicate the retail prices and rebates schemes implemented by Poste Italiane. Moreover, the Authority found evidence of anticompetitive intent in its commercial policy: for instance, Poste Italiane rebates targeted its competitors' customers, promising them better prices and full coverage of rural areas with tracking features in return for exclusive supply of bulk mail services.

[15] See decision of Case No A493 - *POSTE ITALIANE/PREZZI RECAPITO*, published in the AGCM Bulletin n. 1/2018, available on the AGCM website.

Case No. A503 on refusal to grant a copyright licence[16]

55. In December 2017, the AGCM closed an antitrust investigation establishing the abuse of dominant position under domestic law by Società Iniziative Editoriali (SIE), the publisher of L'Adige, the most widely read daily newspaper in the Province of Trento.

56. The investigation focused on whether SIE, by virtue of its dominant position - as it holds, among other factors, a 64% market share - in the upstream market for daily newspapers in the Province of Trento, abused this position by refusing to grant the undertaking Euregio the right to use the contents of L'Adige, an essential input for undertakings active in the downstream market of news review services in the Province of Trento. Indeed, the investigation confirmed that providers of news review services considered L'Adige articles essential input since local customers deemed this daily newspaper an indispensable component of the service.

57. With the opening of antitrust proceedings, the AGCM also considered whether to impose interim measures on SIE by ordering it to grant the copyright licence of L'Adige to Eugenio. Since the conduct was considered capable of causing serious and irreparable damage to competition in the downstream market for news review services, the AGCM ordered SIE to grant to Euregio, and whoever else asks for it, a licence for the contents of L'Adige under FRAND conditions, also taking into account the prevailing market conditions. The Authority also reserved the right to determine the economic terms of the license, should the parties not find an agreement. As this was the case, in March 2017, the AGCM determined the FRAND conditions based on prevailing market conditions. In April 2017, SIE promptly complied with the precautionary measure by issuing the licence to Euregio.

58. In its final decision, the Authority imposed a fine and ordered SIE to refrain from similar conduct in the future and, consequently, to grant licences related to L'Adige under FRAND conditions.

59. This case is interesting because the essential facilities doctrine was applied to a refusal to grant a copyright license and for the first time the AGCM determined, as an interim measure, specific FRAND conditions.

3.2. Mergers and acquisitions

3.2.1. Statistics

60. In 2017, the Authority examined 64 merger transactions of which 54 were cleared in Phase I, seven were dismissed for inapplicability of the merger law and two required an in-depth or Phase II investigation, which all ended with clearance subject to remedies (see next section). In another case, the Authority also conducted proceedings for a revision of the remedies previously imposed for an authorised transaction.

3.2.2. Summary of significant cases

61. In 2017, two concentrations were assessed in Phase II and both were approved subject to structural and behavioural remedies.

[16] See AGCM decision of 20 December 2017, Case *A503 - SOCIETÀ INIZIATIVE EDITORIALI/SERVIZI DI RASSEGNA STAMPA NELLA PROVINCIA DI TRENTO*, published in AGCM Bulletin no. 51/2017

Case C12075-GRUPPO EDITORIALE L'ESPRESSO/ITALIANA EDITRICE

62. The notified transaction concerned the acquisition by Gruppo Editoriale L’Espresso S.p.A. of the exclusive control of Italiana Editrice S.p.A: both merging parties operate directly in the daily newspaper publishing market and in the newspaper advertising market through their respective wholly-owned subsidiaries Manzoni & C. S.p.A (“Manzoni”) and Publikompass S.p.A (“Publikompass”).

63. Following its review, the Authority found that the transaction would strengthen the dominant position already held in the market for local advertising in daily newspapers in the Provinces of Turin and Genoa, by reaching 100% share in the Province of Genoa, and almost a monopoly position in the Province of Turin.

64. According to the AGCM, the concentration would lead to an increase in the price of advertising space, to the detriment of the local advertisers who, due to their fragmentation (there were no aggregators such as media centres) and in absence of any alternative, would have not been able to counterbalance the market power of a merger between Manzoni and Publikompass. The Authority was also concerned that the concentration affected the publishing market, from a more dynamic perspective, by hindering the entry of new publishing companies, given that advertising revenues are important income source for this business.

65. To remedy the identified competition concerns, the acquirer proposed the assignment of the advertising services for the local editions of the national daily newspaper La Repubblica to two independent, unrelated agents, one for the Province of Genoa and one for the Province of Turin. The two advertising agents would not be restricted in their pricing policies when selling advertising space and would negotiate a revenue sharing agreement directly with the merging parties. The remedy package also included the submission of an implementation report within two months of the Authority’s decision and additional annual reports.

66. The AGCM considered the above remedies suitable to resolve the competition concerns identified during its investigation: in particular, granting an independent third party an exclusive concession agreement for advertising in the local edition of La Repubblica was deemed an appropriate measure to neutralize the overlap of Manzoni’s activities with those of Publikompass and to allow entry of new operators to the reference markets, increasing the choice of advertisers and lowering the entry barriers. Therefore, the Authority authorised the concentration conditionally in March 2017.

Case C12113-ITALCEMENTI/CEMENTIR ITALIA

67. The notified transaction concerned the acquisition of exclusive control over Cementir Italia S.p.A. (“Cementir”), by Italcementi S.p.A. (“Italcementi”). Both merging parties produce and sell concrete, cement and aggregates and Italcementi has been part of the HeidelbergCement Group which is also involved in the building materials sector, since 2016.

68. The investigation found that, given that cement is a homogenous product, the main element of differentiation between the plants is the geographical position and, as a result, the degree of substitutability among suppliers depends on the distance between the clients and the plants. The Authority identified the relevant market affected by the operation as the market for the production and marketing of cement, with a local dimension corresponding to catchment areas within a 250 km radius from the plants and terminals acquired.

69. The investigation revealed that the transaction could create or strengthen a dominant position for Italcementi in the catchment areas of Cagnano Amiterno, Maddaloni and Reggio Calabria; the post-merger entity would have a market share higher than 40% and in some cases close to 50% and the competition in these areas was highly fragmented. In addition, the Authority deemed that the transaction could facilitate coordination between firms active in the cement sector due to its structural features (oligopoly with homogenous products and high entry barriers) and cross-supply contracts of Cementir with other competitors in geographic areas with no physical presence of production facilities.

70. To address the competition concerns, the merging parties proposed a remedy package that included divestitures of assets in the critical catchment areas and the commitment to terminate pending contracts of cross-supply of cement and not renegotiate new ones with the same contracting party for three years after the conditional clearance. The Authority approved the transaction subject to the above measures which were considered capable of neutralizing any anti-competitive effects of the transaction.

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

4.1. Opinions and recommendations

71. In 2017, pursuant to Articles 21 and 22 of Law no 287/90[17], the Authority issued 87 non-binding opinions and recommendations, directed towards policymakers and public administration bodies, concerning competition restrictions deriving from laws in force or upcoming legislation. The opinions concerned a wide range of sectors, as shown in the table below: more than half of all opinions/recommendations regarded five key sectors: services, transport, waste management, health and tourism.

[17] 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.

Table 4. Reporting and advocacy, according to economic sector (number of interventions carried out in 2017 pursuant to art. 21 and 22)

	Sector	# of opinions 2017
Energy		13
	Electricity and gas	7
	Mining	1
	Oil industry	1
	Waste disposal	2
	Water	2
Communications		11
	Information technology	5
	Telecommunications	3
	Publishing	1
	Electronic and electric raw materials	1
	Radio & TV	1
Finance & Postal		5
	Postal services	2
	Insurance services	3
Food & Pharma		4
	Food and drink industry	1
	Pharmaceutical industry	3
Transport		16
Services		38
	Services (others)	10
	Health services	9
	Leisure, cultural and sporting activities	4
	Tourism	15
Total		**87**

72. In addition, pursuant to article 21-bis of Law no 287/90[18], the AGCM issued 42 opinions to public administration bodies with the power of challenging their restrictive measures before the Courts in case of non-compliance with the Authority's recommendations. 17 opinions were directed towards public administrations failing to comply with Legislative Decree no. 175/2016, which impose on public administrations the obligation to report to the AGCM their intention to set up publicly-owned enterprises or buy shareholdings in those already existing[19].

[18] Pursuant to art. 21-bis, 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.

[19] In an attempt to limit the perimeter of the local state-owned enterprises to relevant public economic activities, the Legislative Decree no. 175/2016 introduced transparency and disclosure obligations for public administrations which were engaged in a review exercise of direct or indirect shareholdings, in order to assess the need for a rationalization in light of a set of parameters detailed by the same Decree Law and identify the shareholdings that should be

Reporting and advocacy, according to economic sector (number of interventions carried out in 2017 pursuant to art. 21 *bis*)

Sector		# of opinions	2017
Waste			16
Communications			3
	Information technology	1	
	Telecoms	2	
Transports			10
Finance			2
Services			11
	Health services	2	
	Services (others)	9	
Total			**42**

Table 5. Reporting and advocacy, according to economic sector

(Number of interventions carried out in 2017 pursuant to art. 21 bis)

Sector		# of opinions 2017
Waste		16
Communications		3
	Information technology	1
	Telecoms	2
Transports		10
Finance		2
Services		11
	Health services	2
	Services (others)	9
Total		**42**

4.1.1. Description of significant advocacy interventions

Opinion concerning the regulation of non-scheduled mobility services[20]

73. The Authority had long promoted a pro-competitive reform of the taxi industry even before the appearance of the new digital services[21]. In particular, the AGCM

alienated. The AGCM can intervene ex-post, using its Art. 21-bis power, to ensure the correct application of the provisions regulating state-owned enterprises.

[20] See AGCM opinion no. *AS1354 - RIFORMA DEL SETTORE DELLA MOBILITÀ NON DI LINEA*, March 2017, available on the AGCM website.

advocated the removal of certain restrictions introduced to the activities of private hire car drivers, whose services had expanded greatly over the years due to the bottlenecks in the taxi sector. Those restrictions (e.g., the obligation to return to the garage after each ride) became even more anachronistic with the development of app-based booking services.

74. Following lawsuits filed against Uber in Milan in 2015 (in relation to UberPop services with non-professional drivers) and in Rome in 2017 (UberBlack services with professional drivers), the government pledged to reform the entire sector: within this context, in March 2017, the Authority issued an opinion to support the government's intention to enact a new framework for this type of mobility service. According to the Authority, this new framework would entail traditional taxi services competing in the same market with private hire car services and new ride-sharing services.

75. In particular, the Authority pointed to three elements of a potential reform: i) the elimination of the discrimination between taxi drivers and professional private hire vehicles drivers; ii) the removal of any barriers to entry for the new forms of mobility services by reforming the existing regulatory framework to acknowledge the new trends in demand and supply conditions; and, iii) the introduction of a compensation scheme to attenuate the social costs of the reform.

76. In relation to the first element, the Authority suggested the removal of the restrictions on the use of app-based booking services by professional private hire car drivers, as well as the introduction of a more centralized system for issuing licences (at national or regional level), which should be based on economic analysis of the actual and future demand for mobility services (including through consumer surveys).

77. With regard to the second element, the Authority suggested a 'minimal regulation' that would reap the benefits of these new forms of transportation while ensuring competition and safety: this regulation would include a register for the platforms and a set of requirements and obligations for non-professional drivers. At the same time, the AGCM underlined the need for softening the regulation for traditional taxi services by removing the current stringent limits on their activities (e.g., one license principle, rigid schemes for shifts and promotional discounts and requirements such as an insurance scheme for passengers) to allow them to compete with the new services on a level playing field.

78. Finally, the Authority invited the government to consider the opportunity of monetary compensations (to be paid by new entrants) as a transitory social form of protection of the categories most affected by the liberalization reform, by looking at experiences of other jurisdictions.

79. Some of the considerations expressed above were reiterated in the Authority's *amicus curiae* opinion in April 2017 during the course of Uber proceedings before the Tribunal of Rome concerning UberBlack services with professional drivers. In highlighting the importance of harmonizing the regulation on taxi and professional private hire car services, the AGCM called for an interpretation of the current rules that complies with the principle of freedom of private economic initiative as per art. 41 of the Italian Constitution, with a view to achieving the right balance between the competitive advantages deriving from the development of digital platforms (and the protection of

[21] For more information on advocacy activity in this sector, see the AGCM submission to the OECD Roundtable on Taxi, ride-sourcing and ride-sharing services, June 2018, available at: https://one.oecd.org/document/DAF/COMP/WP2/WD(2018)7/en/pdf

related public interests) and the protection of individual categories of drivers. Furthermore, the AGCM recalled that under the current regulatory framework, traditional taxi services may use the price levy to compete against private hire car services offered by professional drivers: the existence of taxi fare regulation at local level is not an obstacle to price cutting strategies, since regulated fares are intended as maximum prices.

80. The Tribunal of Rome confirmed the legality of UberBlack services and therefore the interim measure banning the service was removed.

Opinion concerning organization of the direct awarding of contracts for regional passenger transport services by rail[22]

81. In October 2017, the AGCM, together with the Anti-Corruption Authority (ANAC) and the Transport Regulator (ART), issued a joint opinion concerning the organization of regional rail transport services, addressed to the central government and the Italian regional authorities, as they share responsibility in this area.

82. In particular, the three Authorities expressed some considerations on the use by regional authorities of direct awarding procedures for regional public rail services. While noting that direct and in-house contract awarding constitutes a legitimate derogation from tendering procedures expressly envisaged by Regulation (EC) no. 1370/2007, the two options are nevertheless accompanied by certain statutory requirements of the regional contracting agencies, such as the publication of certain information before and after directly awarding a contract and justifications where requested by a third party, as imposed by Art. 7 (2)-(4) of the Regulation. In addition, pursuant to article 34 (20) of Leg. Decree no. 179 of 18 October 2012, the direct awarding of the service contract should be made on the basis of an ad hoc report, made publicly available, which illustrate the reasons as well as the existence of the requirements laid down by European law for the chosen form of contract.

83. Moreover, the opinion outlined the importance of the additional requirement of the regional contracting agencies to undertake a competitive comparison between the tenders submitted by any other interested operators and that of the operator to whom the regional contracting agencies intend to award the service contract directly (or to make a comparison with appropriate benchmarks in the case of an in-house contract). The opinion called for pro-competitive interpretation of the rules applicable to the award of contracts for regional public rail services, by underlining the fact that such comparison should be carried out following the general principles of transparency, non-discrimination and equal treatment laid down in the TFEU and referred to in article 4 of the Italian Public Procurement Code.

84. In light of this interpretation, the three Authorities considered that, with regard to an interested party requesting to submit a binding tender on equal terms as the operator that has been identified directly as potential contractor, the information provided by the contracting authorities cannot be limited to the information required under article 7(2) of the Regulation (i.e. name and address of the contracting authority, type of award envisaged, services and areas potentially covered by the contract). Rather, the contracting

[22] See opinion n. *AS1441 - PROCEDURE PER L'AFFIDAMENTO DIRETTO DEI SERVIZI DI TRASPORTO FERROVIARIO REGIONALE*, published in the AGCM Bulletin n. 42/2017. An English translation is available at: https://www.autorita-trasporti.it/wp-content/uploads/2017/10/Joint-position-Procedures-for-direct-award-of-regional-transport-services-by-rail-25-October-2017-1.pdf

authorities should make available and accessible any data and information on the format of the service, at least in terms of levels and dynamics of demand, instrumental goods for the provision of the service, rolling stock and staff to be directly allocated to the service. Therefore, the three Authorities encouraged the implementation of the legal and regulatory provisions included in the Regulations on the direct awarding of contracts for public rail services in a manner that is more consistent with competition principles, especially where the competent authorities receive expressions of interest from operators other than the initially chosen potential contractor.

Opinion on short-term rental accommodation offer[23]

85. In June 2017, Law no. 96/2017 introduced, inter alia, a provision on short-term rental intermediaries changing their tax regime: in the event that they collect the rent or fees related to their short-term lease agreements, or if they intermediate in the payment of the rent or fees, intermediaries ought to be considered "as withholding agent", i.e. they ought to apply a 21% withholding tax rate on the rent amount and arrange for the deposit of the collected tax. An additional obligation is envisaged for intermediaries not resident in Italy, requiring the appointment of a tax representative

86. While appreciating legislator's public interest in counteracting tax evasion in short-term tourist rentals, the Authority outlined the fact that the introduction of this new tax regime was potentially capable of altering the competitive dynamics between different online platform-based operators, to the detriment of those operators heavily investing in the provision of online payment services. In the view of AGCM, the legislative measure would appear to be an administrative burden not directly linked to the business activity performed by the sector operators; in addition, it would be a disincentive to the intermediaries offering digital payment systems on their platforms, with possible negative effects on tenants. Indeed, it was noted that digital payment systems generally bring additional benefits for tenants, in the form of provision of a series of commercial guarantees against different risks and of reimbursement, which go beyond the guarantees envisaged by the Law. Therefore, the use of digital payments through the platform strengthens the tenants' position, resulting in greater predictability of their outcomes and a possible reduction of transaction costs.

87. Finally, the Authority outlined how the narrow scope of this tax measure, which does not apply to intermediaries active in other markets with similar characteristics, could create asymmetry in the competitive dynamics existing within the different parts of the digital economy.

4.2. Monitoring of advocacy and reporting activities

88. Since 2013, the Authority has systematically monitored and assessed the effectiveness of its advocacy efforts. Every six months, it undertakes detailed analysis to assess the outcome of its opinions and recommendations in terms of compliance. Data is broken down into type of advocacy tools used, public administration involved (central versus local), source of the opinion (ex-officio or arising from a complaint or request) and economic sector involved. This exercise allows the Authority to verify closely the

[23] See AS1451 – *Decreto-legge 50/2017 – LOCAZIONE BREVE E OFFERTA TURISTICA*, in Bulletin no. 45/2017 available on the AGCM website.

effectiveness of its advocacy interventions and to gain a better understanding of the key factors that make competition advocacy successful.

89. The latest results, regarding the period 2016-2017, suggest that the Authority's interventions proved to be positive overall, considering that in the majority of cases there was a positive response to the Authority's suggestions[24]. In particular, out of an overall of 236 opinions, the success rate achieved was 53%, with 44% fully positive results and 9% partially positive results. With reference to three categories of intervention, the following success rates were recorded:

- the success rate of opinions issued pursuant to art. 21 was 17% overall (6% positive results, 11% partially positive);
- the success rate of advocacy interventions made pursuant to art. 22 was, overall, 73% (57% positive results, 16% partially positive);
- the success rate of reasoned opinions issued pursuant to art. 21 *bis* was 48%, i.e., in 48% of the cases, the administrative acts were amended without the need for the AGCM to challenge them before the Courts.

90. In analysing the results in relation 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 the Authority issued the opinion *ex officio*. In particular, as remarked in past evaluations, non-binding opinions and recommendations pursuant to art. 21 produced only partially satisfactory results (success rate of 17%), in part due to the fact the content of many AGCM interventions is aimed at advocating broad and deep reforms, which obviously require time to be enacted.

91. On the other hand, opinions 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 administrations (success rate of 73%). This confirms the role taken on by the AGCM as a consultant of public administrations in competition related matters, at both central and local levels.

92. In relation to opinions under art. 21 *bis*, the number of reasoned opinions has increased substantially (from 14 cases in 2016 to 42 in 2017) due to new responsibilities (see section 3.1 above); the positive outcomes increased from 21% in 2016 to 48% in 2017.

93. As regards the sectors concerned by the advocacy decisions, most interventions have focused on the sectors of transport and rentals (17%), general services (14%), waste (11%), tourism (8%), and health services (6%), which together count for 58% of decisions.

4.3. Market studies

94. In May 2017, the AGCM launched a market study on big data in cooperation with the Italian Communication Regulator and the Italian Data Protection Authority, in order to identify potential competition concerns and define a regulatory framework able to foster competition in the markets of the digital economy, protect privacy and consumers,

[24] An English version of the latest report (May 2018) is available on the AGCM website. The previous monitoring reports are available in this section.

and promote pluralism within the digital ecosystem[25]. In particular, from a competition perspective, the aim of the inquiry is (i) to assess whether and under what conditions big data may provide market power, (ii) to analyse possible abusive or collusive conduct by online operators stemming from big data, (iii) to understand the competitive relevance of privacy and (iv) to identify regulatory frameworks suitable for fostering static and dynamic competition.

95. In June 2018, the Authority published the interim results of the consumer survey, which involved a sample of online service users. The findings[26] showed a low degree of user awareness of how digital platforms transfer and use of their personal data, together with a low interest in the portability of data from one platform to another.

96. In its second phase, the market study will address the following topics from a competition perspective: market power analysis and merger review, including conglomerates, in the digital economy; ii) the qualitative dimension of competition in markets where services are offered for free; iii) the role of portability in reducing switching costs and ensuring market contestability; iv) the effects of using data for profiling and offering users customized services and sales conditions.

97. The final findings are expected to be published in 2019.

5. Resources of competition authorities

5.1. Resources

5.1.1. Annual budget

98. The Italian Competition Authority does not have a specific competition-related budget. The overall expenditure incurred in 2017 amounted to € 59.4 million (€ 55.9 m in 2016). The overall expenditure figure also includes costs for non-competition responsibilities (concerning unfair commercial practices, misleading and comparative advertising, conflicts of interest, unfair contractual clauses and legality rating).

99. Pursuant to Leg. 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 0.055 per thousand, set in January 2018. The revenue from these contributions replace all previous forms of funding (merger fees and public budget).

5.1.2. Number of employees

100. The total number staff of the AGCM at the end of 2017 was 277. This includes all human resources working for the Authority, including in non-competition areas (unfair commercial practices, misleading and comparative advertising, conflicts of interest, unfair contractual clauses and legality rating).

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[25] For more information, see the English version of the press release of 1 June 2017, available on the AGCM website.

[26] For more information, see the English version of the press release of 8 June 2018, available on the AGCM website.

101. 128 officers work in the area of competition (34 as support staff and 94 as non-administrative staff). The non-administrative staff is composed of 50 lawyers, 40 economists and 4 other professionals.