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## Annual Report on Competition Policy Developments in Italy

-- 2018 --

5-7 June 2019

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## Italy

### 1. Executive Summary

1. This report covers the enforcement and advocacy activities performed in the past calendar year (1 January 2018 to 31 December 2018) 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 May 2019.

2. In 2018, AGCM’s **enforcement activity** resulted in an overall fine of €820 million, the highest amount ever and almost doubled compared to the previous year, for infringements in the area of anticompetitive cartels/agreements (€681 million) and abuses of dominance (€139 million). One single cartel case, prompted by a leniency application and involving nine captive banks of the main car manufacturers in Italy for a long-lasting exchange of information on prices and quantities, attracted the highest fines ever totaling €678 million. In this and another case, the Authority ascertained the involvement of business associations in coordinating and maintaining the collusive conduct.

3. In the area of abuses, the AGCM imposed a €109m fine on two energy incumbent operators for their strategy aimed at undermining the transition phase to a full liberalization for retail domestic users. Another achievement with benefits to vulnerable consumers concerned the closing of the AGCM investigation ascertaining the compliance of Aspen Group with the 2016 infringement decision for excessive prices on its off-patent anti-cancer drugs: in April 2018, the group eventually negotiated a new agreement with the Italian pharma agency AIFA and as a result, prices have been reduced from a minimum of 29% to a maximum of 82% with a retroactive effect from the date of the infringement decision.

4. Merger review intensified in 2018, with 73 transactions examined, that is, an increase of 14% compared to 2017, which is partly due to the changes in the second merger notification thresholds (from €49 to €30 million) occurred in late 2017. Moreover, the Authority conducted an in-depth investigation in four merger cases, all cleared with remedies.

5. On the **advocacy** front, the Authority issued 84 recommendations and opinions to central and local government authorities. In relation to the sector enquiry on big data and competition being carried out jointly with the privacy and telecom regulators, the Authority published its preliminary results in June 2018 while the final report is expected in 2019. Another important achievement is the publication of the Authority’s guidelines on **antitrust compliance**, which identify the main elements of competition compliance programs for the purposes of a fine reduction in the context of an antitrust investigation, as a result of a reach-out initiative that benefitted from numerous contributions by the business community.

6. In terms of **trends**, ensuring a correct functioning of competitive tender procedures in **public procurement** remains a top priority. In 2018 the AGCM launched four new investigations for alleged bid-rigging and it is currently carrying out two investigations to ascertain abuse of dominance by incumbent operators refusing to supply information and data to procurement agencies in order to delay the execution of tender

procedures in public transport and gas distribution sectors. From an advocacy perspective, AGCM is increasingly being involved in the tender drafting process by procurement agencies, both at national and local level. Furthermore, in 2018 the Central Public Procurement Agency requested assistance to improve the design and prevent collusion in nine national tenders. This effort culminated in a general report on the state of administrative concessions, sent to the Government and Parliament in December 2018. Besides reiterating that tenders should be the rule for granting concessions, the Authority performed a detailed analysis in several sectors, providing specific recommendations to address competitive restraints.

7. Another priority of the agency is removing barriers and/or fostering competition in **new or recently liberalised markets**: in 2018 it investigated abuse of dominance in the retail electricity markets, in the copyright management services and in the taxi booking markets. In the case of retail electricity for domestic users, the enforcement action of the AGCM was accompanied by an advocacy intervention aimed at raising consumer awareness of the opportunities of the upcoming full liberalization of the retail energy markets: the Authority published a booklet (“Vademecum”) illustrating the road map to the liberalization and users’ rights and suggesting tips for searching retail offers. In the newly liberalised markets for managing of copyrights to authors by collective management societies, the Authority intervened to stop the incumbent strategy aimed at extending and preserving its legal exclusivity. In the taxi booking markets, the Authority found that the non-compete clauses between radio taxi cooperatives and their affiliated taxi drivers were considered anticompetitive as a result of their cumulative foreclosing effects vis-à-vis new entrants with an open business models.

8. In 2018 the AGCM continued its efforts to improve agency effectiveness. To address the novel challenges of the digital economy, the Authority recruited IT experts, including a data scientist, and set up a Working Group on Algorithms. To increase the efficiency and effectiveness of its merger remedies, the Authority carried out an internal assessment of recent practice to identify areas for further improvement.

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

### 2.1. Implementation of the annual law on competition

9. The annual law on competition (Law no 124/2017), which introduced measures in several sectors (regulated professions, insurance, telecommunications and the electricity and gas sectors) and was inspired by recommendations made by the AGCM in previous years<sup>1</sup>, still requires secondary legislation to be implemented, especially in sectors where a liberalization process is underway.

10. The opening of the retail electricity and gas markets for domestic customers was postponed once again (to 1<sup>st</sup> July 2020) and the Authority advocated for the adoption of

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<sup>1</sup> 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.

the necessary measures to end this transition process as smooth as possible. In the market for non-scheduled transportation services, including taxi and private-hire vehicle (PHV) services, Law n. 12/2019 intervened by introducing territorial restrictions for private-hire vehicle services, blocking the release of new authorizations for PHV drivers and postponing an overall reform of the sector to account for the new services provided via web apps using technological platforms to connect passengers with drivers.

11. In the Budget Law 2019, the legislator introduced further derogations to the application of the Legislative Decree no. 175/2016 which attempted to limit the perimeter of the local state-owned enterprises to relevant public economic activities. The 2016 measure introduced transparency and disclosure obligations for those public administrations which were required to review their direct or indirect shareholdings in undertakings, in light of a set of parameters detailed by the same Decree Law, in order to subsequently identify the shareholdings to be alienated. In the Budget Law, the legislator exempted certain categories of undertakings from the application of the Legislative Decree, in particular those controlled by listed companies and those which yield on average a positive income over three preceding years.

## **2.2. AGCM Guidelines on antitrust compliance programs**

12. In September 2018, the Authority adopted its Guidelines on antitrust compliance to provide undertakings with guidance on how to structure an effective antitrust compliance programme and its treatment in the context of an antitrust investigation. Indeed, the guidelines aim at strengthening the prevention of antitrust infringements by promoting the adoption of effective compliance programs by providing guidance on: (i) how to structure a compliance program; (ii) the content of the request for the AGCM to recognize the compliance program as a mitigating circumstance; (iii) the criteria used by the Authority to quantify the fine reduction.

13. The Guidelines specify that the compliance programme must be adequate and in line with the European and national best practices. Importantly, the mere adoption of a compliance programme will not be considered as a mitigating factor unless it is proven that there is an effective and real commitment to ensuring that it is complied with. A compliance program must be tailored to the nature, dimension and market position of the company as well as take into account the specific features of market in question.

14. According to the Guidelines, the main elements of an effective program include the recognition of the value of competition as an integral part of corporate culture, the identification and assessment of antitrust risk specific to the undertaking, the design of management processes suitable to reduce that risk, the definition of an incentive scheme and the execution of training and of periodic monitoring and possible updating of the programme.

15. In terms of fine reduction, the adoption and effective implementation of a specific compliance programme can be taken into account as a “mitigating circumstance” and can lead to a reduction of the basic amount of the fine of up to 15%, with the exception of compliance programmes adopted after the opening of proceedings, which may qualify for a reduction of the fine up to 5%.

16. However, no reduction of the sanction will be granted for programmes already in place before the opening of proceedings that are manifestly inadequate. In particular, a compliance programme will be considered manifestly inadequate if, in case of eligibility for leniency, an undertaking or an association of undertakings fails to put an end to the

infringement and to submit, as quickly as possible, a request for leniency pursuant to Art. 15, paragraph 2-bis of Law no. 287/90 and of the notice on the non-imposition and reduction of fines.

17. The final adoption of the guidelines followed a public consultation, during which stakeholders could submit their observations. An English version is available on the [AGCM website](#).

### 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

18. In 2018, the Authority closed eight investigations concerning anticompetitive agreements, including cartels, assessed seven cases of abuse of dominant position, investigated four in-depth mergers and revised merger remedies in one case.

**Table 1. Activity of the Authority**

	2017	2018
Anticompetitive agreements (incl. cartels)	10	8
Abuse of dominant position	12	7
Merger transactions examined	64	73
Separation obligations	-	1
Sector inquiries	-	1
Non-compliance with the decision	-	1
Non-compliance with prior notification obligations	-	-
Recalculation of fines	1	4

**Table 2. Proceedings concluded in 2018, 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)	1	7	-	8
Abuse of dominant position	1	6	-	7
	Clearance	Prohibition, authorization subject to remedies, revision of remedies	No jurisdiction or inapplicability of the law	Total
Mergers of independent enterprises	61	5	7	73

19. In terms of judicial reviews, in 2018, eight out of twelve decisions were upheld fully or partially by the TAR of Lazio (Court of First Instance). In the same period, all the seven decisions were upheld fully or partially by the *Consiglio di Stato* (Supreme Administrative Court).

### *Agreements*

20. In 2018, the Authority concluded eight investigations, establishing infringements in four cases which concerned violations<sup>2</sup> of Art. 101 of the Treaty on the Functioning of the European Union (TFEU) and attracted fines totalling 681.7 € million. In one case, the relevant business association played a key role in the cartel organization and operation<sup>3</sup>.

21. In one instance, involving a public tender for the production of plasma derivatives for the Italian National Health System, the Authority closed the investigation with a non-infringement decision since the evidence gathered was considered insufficient to corroborate the allegation of anticompetitive joint bidding made in the decision opening the proceedings<sup>4</sup>. The remaining three investigations were closed with commitments<sup>5</sup>.

22. Ten investigations were still under way as at 31 December 2018.

**Table 3. Agreements examined in 2018, according to economic sector (proceedings concluded)**

Main sector involved	
Finance/Banking	2
Transport	2
Pharmaceuticals	1
Telecommunications	1
Professional services	1
Other manufacturing activities	1
<b>Total</b>	<b>8</b>

### *Abuses of dominant position*

23. In 2018, the Authority concluded seven investigations concerning abuses of dominant position. In four cases, the proceedings confirmed the infringement of Art. 102 of the TFEU<sup>6</sup> and the Authority imposed fines totalling 138.5 € million; in the other two cases, the Authority concluded the investigations accepting the commitments proposed by

<sup>2</sup> Cases N.: I801A-SERVIZIO DI PRENOTAZIONE DEL TRASPORTO MEDIANTE TAXI – ROMA; I801B-SERVIZIO DI PRENOTAZIONE DEL TRASPORTO MEDIANTE TAXI – MILANO; I811-FINANZIAMENTI AUTO; I812-F.I.G.C. REGOLAMENTAZIONE DELL'ATTIVITA' DI DIRETTORE SPORTIVO, COLLABORATORE DELLA GESTIONE SPORTIVA, OSSERVATORE CALCISTICO E MATCH ANALYST.

<sup>3</sup> Case N. I812 F.I.G.C. REGOLAMENTAZIONE DELL'ATTIVITA' DI DIRETTORE SPORTIVO, COLLABORATORE DELLA GESTIONE SPORTIVA, OSSERVATORE CALCISTICO E MATCH ANALYST.

<sup>4</sup> Case N. I819-INTERCENT-ER/GARA PER FARMACI EMODERIVATI.

<sup>5</sup> Case N. I773D-CONSORZIO BANCOMAT-COMMISSIONI BILL PAYMENTS; I799-TIM-FASTWEB-REALIZZAZIONE RETE IN FIBRA; I813-RESTRIZIONI ALLE VENDITE ON LINE DI STUFE.

<sup>6</sup> Cases N.: A511 - ENEL/CONDOTTE ANTICONCORRENZIALI NEL MERCATO DELLA VENDITA DI ENERGIA ELETTRICA, A513 - ACEA/CONDOTTE ANTICONCORRENZIALI NEL MERCATO DELLA VENDITA DI ENERGIA ELETTRICA A487 - COMPAGNIA ITALIANA DI NAVIGAZIONE-TRASPORTO MARITTIMO DELLE MERCI DA/PER LA SARDEGNA, A508 - SIAE/SERVIZI INTERMEDIAZIONE DIRITTI D'AUTORE.

the firms under investigation<sup>7</sup>. Finally, in one case the investigation was closed without infringement as the grounds for action fell apart<sup>8</sup>.

24. As at 31 December 2018, eight proceedings were pending.

**Table 4. Abuses examined in 2018, according to economic sector (proceedings concluded)**

Main sector involved	
Electricity and gas	3
Cinema and music industry	2
Oil industry	1
Transport	1
<b>Total</b>	<b>7</b>

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

Case N. I811 on a cartel the retail market for motor vehicles purchased through “captive” auto lending services<sup>9</sup>

25. In December 2018, the Authority issued an infringement decision for a breach of Art. 101 TFEU, imposing a fine of overall €678 million on the leading captive banks and related automotive groups active in the sale of vehicles as well as their trade associations. The relevant market concerned the retail market for motor vehicles purchased via “captive” auto lending services, consisting of loan and lease services offered by the finance subsidiaries of car makers, whose sole purpose is making loans to customers (auto captive banks).

26. The investigation was launched following the submission of a leniency application by Daimler AG and Mercedes Benz Financial Services Italia S.p.A., and involved nine captive banks and, in some cases, their controlling companies (including the car makers: FCA, Ford, General Motors, Daimler, Renault, Toyota and Volkswagen) and the two Italian business associations Assofin and Assilea.

27. The investigation ascertained the coordination of commercial policies and strategies through an intensive exchange of commercially strategic information among the auto captive banks, from 2003 to 2017. More specifically, the Authority found that the parties exchanged information concerning prices (such as interest rates, fees, promotional rates, etc.) and quantities (number and value of cars sold thanks to loan/leasing, number and value of insurance contracts related to cars sold thanks to loan/leasing, etc.), at individual level and covering current data and future projections, which were useful to prepare annual budgets and marketing plans. The exchange of data occurred directly (by

<sup>7</sup> Cases N.: A508B-SIAE/SERVIZI INTERMEDIAZIONE DIRITTI D'AUTORE, A507-SERVIZIO RIFORNIMENTO CARBURANTE AVIO AEROPORTO DI BERGAMO.

<sup>8</sup> Case N.: A512-A2A/CONDOTTE ANTICONCORRENZIALI NEL MERCATO DELLA VENDITA DI ENERGIA ELETTRICA.

<sup>9</sup> See AGCM decision in Case No. I811 - FINANZIAMENTI AUTO, published in AGCM Bulletin n.3/2019, and available on the AGCM website.

email and during so called ‘captive meetings’) and indirectly, through the two associations involved, Assilea and Assofin.

Cases No. I801A and I801B on exclusivity for taxi drivers in availing of taxi ride sourcing and dispatching services in Rome and Milan<sup>10</sup>

28. In June 2018, the AGCM issued two infringement decisions ex. Art. 101 of the TFEU against several taxi cooperatives active in the market for sourcing and dispatching of taxi rides in Rome and Milan. The two decisions concerned vertical agreements between taxi cooperatives and their affiliates (taxi drivers), ascertaining that the exclusivity clauses in the form of non-compete obligations would restriction competition in the market for booking taxi rides due to their cumulative foreclosing effects. The two parallel investigations were prompted by a complaint from MyTaxi Italia, belonging to the German Group Daimler AG, which began to offer its taxi booking services through its app in 2015.

29. Taxi cooperatives offer to their affiliated taxi drivers not only the traditional services of taxi radio dispatch/booking and potentially a large pool of end-customers, but also a number of additional services (e.g., financial services, radio hardware equipment), for which they ask exclusivity in the form of non-compete obligation with indefinite duration, that is, taxi drivers affiliated to one cooperative cannot sign up to another at the same time. In addition, affiliated taxi drivers bear high entry costs (admission fee + monthly fee) and exit costs (some sunk costs linked to radio hardware and other equipment plus 3-6 month advance notice). Since 2013, traditional radio taxi cooperatives have tightened the non-compete clauses due to the emergence of new forms of ridesource & dispatch services (like telephone and app-based services). In April 2015 MyTaxi entered the Italian market with its new business model based on the absence of non-compete clauses, commission fee calculated on each ride and with basically no entry/exit costs. Unlike Uber, MyTaxi services rely only on professional authorized taxi drivers.

30. In its assessment, the Authority dealt with the issue of compatibility with antitrust rules of non-complete clauses which are envisaged by the Italian Civil Code on the conditions for members of a “cooperative undertaking”, including the condition by which members shall not carry out activities in competition with the cooperative undertaking). The Authority carried out an indispensability and proportionality test of the clauses in light of the actual legal and economic context, in order to assess whether such clauses would foreclose entry and/or expansion of new operators using a different business model (e.g., based on open platform like MyTaxi).

31. First, foreclosure concerns were expressed with respect to the indefinite duration of non-compete clauses, beyond 5 year period admitted by the applicable rules. Second, the analysis of the market covered by the non-compete clauses showed that 60-65% of taxi drivers in Rome and Milan were bound by exclusivity, and this figure was constant over the period 2015-2017 in line with the number of affiliations to taxi cooperatives, a clear indication that there was no switching by taxi drivers which had no incentive to terminate the relationship with their radio taxi cooperatives and sign up with MyTaxi due to the high exit costs. Third, in assessing the impact of the non-compete obligations on

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<sup>10</sup> See AGCM decision in Case No. I801A - SERVIZIO DI PRENOTAZIONE DEL TRASPORTO MEDIANTE TAXI – ROMA, and I801B - SERVIZIO DI PRENOTAZIONE DEL TRASPORTO MEDIANTE TAXI - MILANO, published in AGCM Bulletin no. 26/2018, and available on the AGCM website (I801A and I801B).

competition among all ride-sourcing channels – both direct (hailing, stand-based access) and indirect (telephone, radio dispatch, app-based) – the Authority found that such clauses were not proportionate to the legitimate concern of the viability of the traditional taxi radio cooperatives: the evidence showed that taxi drivers played with the different sources, using MyTaxi or their radio taxi cooperative depending on the real-time conditions. The economic analysis showed that the rate of rides which could not be booked/dispatched was structurally higher for MyTaxi than for the taxi cooperatives and that the number of independent taxi drivers was not sufficient for viability of open-platform like MyTaxi.

32. The Authority also considered that the conditions under Art. 101 (3) were not met in these two cases and therefore it *concluded that the non-compete clauses were restrictive of competition*, since they overall determined a cumulative foreclosure effect aimed at preventing the entry and expansion of new competitors with more efficient technologies to match demand and supply in taxi rides, which would increase consumer welfare and drivers' earnings.

#### Case No. I813 - Restrictions to online sales of stoves<sup>11</sup>

33. In April 2018, the AGCM concluded formal proceedings under Article 101 of the TFEU against Cadel, a company belonging to a major European group that produces biomass heaters. The investigation concerned the commercial policy adopted by Cadel for its online distribution channels, with the apparent aim of preventing online dealers from selling Cadel products at excessively low prices.

34. In particular, the company required online dealers to charge minimum sale prices and to apply the maximum discounts indicated by Cadel. Further restrictions of online sales included: (i) the obligation to market Cadel products only through Italian sites registered with the domain '.it'; (ii) the prohibition to use languages other than Italian for online offers of Cadel products; (iii) the obligation to deliver Cadel products only to customers in the Italian territory and (iv) the prohibition for dealers not admitted to the Cadel distribution network to offer and sale Cadel products online.

35. The Authority's competition concern was that such clauses would prevent online dealers from expanding their businesses abroad, as well as foreign customers from purchasing Cadel products, thus giving rise to anti-competitive territorial restrictions. The AGCM closed the case in light of the commitments submitted by Cadel to address the mentioned competition concerns. Namely, the party committed: (i) not to set retail prices (directly or indirectly) neither constrain commercial strategies of online dealers; (ii) to refrain from recommending retail prices for two years and (iii) to inform resellers on its new online sales policy.

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<sup>11</sup> See AGCM decision in Case N. I813 - RESTRIZIONI ALLE VENDITE ON LINE DI STUFE, published in AGCM Bulletin no. 17/2018, and available on the AGCM website

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

Cases No. A511 – A513 on abuses in the retail electricity markets<sup>12</sup>

36. In December 2018, the Authority imposed a fine of € 93 million and € 16 million on Enel Group and Acea Group, two major utilities in the energy sector, for a breach of Art. 102 of TFEU, by implementing an exclusionary strategy aimed at foreclosing new entrants in the retail market for domestic which was expected to be fully liberalised in July 2019 at the time when conducts were put in place. The case was opened on the basis of complaints filed by the Industry Association AIGET, by Green Network and by several individual customers and a consumer association.

37. The two groups are the main leaders operating in the Italian electricity sector, vertically integrated in the production, distribution and supply of electricity. In particular, the two groups own a concession for the distribution network in their exclusive areas and, at retail level, they are both active in the liberalized market (for industrial customers) as well as in the captive markets (for domestic users and small businesses with tariffs set by the regulator), through separated subsidiaries, as imposed by the legal unbundling obligation. While domestic users and small companies are already allowed to switch to the liberalised market and choose their provider, the full liberalisation of the retail electricity sector expected by July 2019 implied that the regulated tariffs would be abolished and domestic users and small companies still in the captive market would have to choose a provider.

38. In this context, the Authority's investigation found that Enel and Acea abused their individual dominant positions (in the captive markets) by inducing their captive customer base to switch from the regulated market to the liberalised one by signing contracts with their retail companies. In particular, the two groups used in a discriminatory manner the confidential and sensitive information gathered from their captive clients (by acquiring a "privacy" consent to be re-contacted for commercial purposes) for the sole benefit of their retail subsidiaries in the liberalised market. Moreover, the evidence gathered showed that the two groups availed of the network of retail stores of their captive market subsidiaries to sell contracts for the liberalised markets, and established economic incentives for their employees to increase their efforts in selling contracts for the liberalised markets.

39. According to the AGCM, the purpose of the Enel and Acea conducts was to retain their captive clients by hindering their possibility to switch to a different supplier in the liberalised market, thus making a pre-emption on the opening of the retail market, expected for July 2019<sup>13</sup>.

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<sup>12</sup> See decisions of Cases No A511 - ENEL/CONDOTTE ANTICONCORRENZIALI NEL MERCATO DELLA VENDITA DI ENERGIA ELETTRICA and A513 - ACEA/CONDOTTE ANTICONCORRENZIALI NEL MERCATO DELLA VENDITA DI ENERGIA ELETTRICA, published in the AGCM Bulletin n. 2/2019, available on the AGCM website.

<sup>13</sup> The deadline has been subsequently moved to July 2020, as noted in section 1.1.

Case No.A508 on abuse in the newly liberalised markets for managing of copyrights to authors by collective management societies<sup>14</sup>

40. In September 2018, the Authority found that the Italian Society of Authors and Publishers (SIAE) abused its dominant position in breach of Article 102 TFEU in the markets for (i) the provision of services for the management of copyrights to authors; (ii) the licensing of copyrights to users; and (iii) the provision of services for the management of copyrights on behalf of foreign collecting firms. The investigation was prompted by a complaint filed by Soundreef S.p.A. and Innovaetica S.r.l., two independent management entities of copyrights.

41. According to the AGCM, SIAE has implemented since 2012 an exclusionary strategy aimed at extending and preserving a legal exclusivity, which, until full implementation in Italy of the EC Directive (2014/26/UE), was granted to the SIAE by Article 180 of Law No. 633/1941. More specifically, the strategy was implemented by means of: (i) obliging authors to exclusively assign to SIAE the management of copyrights which were not covered by the legal monopoly as a condition for the SIAE supplying its reserved services (e.g., by bundling liberalised and reserved services or imposing a contractual prohibition to split the rights and services covered by SIAE licence); (ii) de facto managing and collecting rights of co-authors even when the latter explicitly demanded their rights be managed by a competing collecting firm or by the authors themselves; (iii) hindering the ability of TV broadcasters to deal with competing collecting firms and/or directly with the rights-holders even upon explicit requests; (iv) hindering the ability of foreign collecting firms to deal directly with authors or with competing collecting firms in Italy, also in connection with works of foreign authors that have never been covered by the legal monopoly.

42. The AGCM rejected the argument that the contested conducts were objectively justified by the former legal monopoly and related public mission (invoking Article 106 TFEU) or by any technical obstacle. According to the AGCM, such conducts were disproportionate and unnecessary for any possible public mission, even when the legal exclusivity was in force, and hindered the development of new technological tools which enabled a more accurate calculation of the actual time of both the copyrights' use and of the authors' representation. However, in the AGCM decision the complexity of the conducts and the uncertainty of the initial phase of the liberalization process represented a mitigating circumstance that justified a symbolic fine of € 1,000.

Case No. Case No A480 Aspen / Excessive and unfair prices<sup>15</sup>

43. In September 2016, the Authority had imposed a fine of €5.2 million to the multinational pharmaceutical group Aspen 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. In the final decision, the Authority issued a cease and desist order with no indication on prices and required the party to inform the Authority, within 60 days from the decision's date, of the actions adopted to comply with. Aspen refused to comply

<sup>14</sup> See decision of Case No A508 - SIAE/SERVIZI INTERMEDIAZIONE DIRITTI D'AUTORE, published in the AGCM bulletin no. 40/2018, available on the AGCM website.

<sup>15</sup> See AGCM decision in Case A480B - INCREMENTO PREZZO FARMACI ASPEN-INOTTEMPERANZA, published in AGCM bulletin n. 26/2018, and available on the AGCM website.

with the decision and delayed the renegotiation with AIFA; therefore, in March 2017, the Authority opened proceedings for non-compliance<sup>16</sup>.

44. Negotiations between Aspen and AIFA continued but turned out to be unsuccessful since AIFA rejected Aspen request to: include trademark acquisition costs among the production costs relevant to justified the price increase; use EU weighted average prices rather than 2013 prices as a starting point for the negotiation; use the prices of therapeutic alternatives as benchmark.

45. In March 2018, the AGCM sends a Statement of Objections (SO) to Aspen, alleging a dilatory strategy by refusing to provide relevant information (i.e., contracts signed with the actual drugs producers). In April 2018, Aspen submitted all the relevant information (supplier contracts, costs related to quality & safety etc.) and reached an agreement with AIFA whereby the new prices are between 30% and 80% lower than the 2014 prices and the application of the new prices is retroactive, to the date of the infringement decision (September 2016).

46. In June 2018, the AGCM closed proceedings with no sanctions and estimated that, as a result of the new negotiation, the public savings would amount to roughly €8m per year.

## 3.2. Mergers and acquisitions

### 3.2.1. Statistics

47. In 2018, the Authority examined 73 merger transactions of which 61 were cleared in Phase I, seven were dismissed for inapplicability of the merger law and six required an in-depth investigation, four of which ended with clearance subject to remedies (see next section) and one cleared unconditionally; the remaining other case concerned the revision of the remedies previously imposed for an authorised transaction.

### 3.2.2. Summary of significant cases

48. In 2018, five concentrations were assessed in Phase II and all but one were approved subject to mix of structural and behavioural remedies.

#### C12109 - PROFUMERIE DOUGLAS/LA GARDENIA BEAUTY-LIMONI<sup>17</sup>

49. In January 2018, the Authority authorized the acquisition of La Gardenia and Limoni by Profumerie Douglas, all active in the retail distribution of cosmetic products and luxury fragrances. The transaction envisaged the concentration of the first and second market operator in the relevant markets and, according to the Authority, would have raised unilateral effects concerns in several local markets. In the end, the Authority accepted and made binding a remedy package proposed by the merging parties, which included the divestiture of a number of stores in 15 local markets.

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<sup>16</sup> For a description of the case, see 2016 annual report available at the AGCM website.

<sup>17</sup> See AGCM decision C12109 of 17 January 2018, published in the Bulletin n.2/2018 and available on the AGCM website.

C12125 - 2i Rete Gas S.p.A.-Nedgia S.p.A.<sup>18</sup>

50. In January 2018 the AGCM authorized with conditions the acquisition of control of Nedgia by 2i Rete Gas, two gas distribution companies. The transaction was capable of leading to the creation of dominant position suitable to reduce competition in future tenders for the award of natural gas distribution concessions in certain areas of central and southern Italy. The transaction was cleared subject to some remedies, including the divestment of natural gas distribution activities in some areas and the application of a series of measures aimed at reducing financial and information barriers to the benefit of newcomers.

C12139 - Noah 2 / Mondial Pet Distribution<sup>19</sup>

51. In April 2018 the Authority cleared conditionally the transaction which concerned the acquisition by Noha of the exclusive control of Mondial Pet, active in the distribution of products for pets. At the end of an in-depth analysis of the competitive effects in 46 isochrone-based relevant geographic markets in which the concentration resulted to lead to horizontal overlaps, the Authority concluded that the transaction was likely to have detrimental effects on competition in three local markets. The concentration was therefore authorized subject to remedies submitted by the parties, consisting in the sale of points of sale in the areas concerned.

C12183 - Luxottica Group - Barberini<sup>20</sup>

52. In November 2018, the Authority authorized subject to remedies the transaction which involved the acquisition by Luxottica of exclusive control of Barberini. The Authority's assessment led to the conclusion that the concentration was likely to create or strengthen the dominant position of Luxottica in the markets for the production of glass blanks for plano lenses, the production of glass lenses and the production and distribution of sunglasses. In its assessment, the Authority also took into consideration the role played by Barberini in R&D and the strong vertical integration of Luxottica.

53. The target company, Barberini, has always been at the forefront of research and development of new products/treatments to make glass lenses more resistant and lighter and, as a result, it became the main supplier, if not exclusive, of all manufacturers of sunglasses with glass lenses (including, Luxottica's competitors). With this concentration, therefore, Luxottica would have acquired the only glass plano lens manufacturer in the world, active in innovation and improvement of this input, thus acquiring a dominant position in this upstream market, as well as strengthening its position as the only vertically integrated operator present at all levels of the production and sale of sunglasses, from the production and processing of glass blanks to retail sales to the final consumer.

54. According to the Authority, the vertical integration resulting from the transaction would have encouraged Luxottica to foreclose access to production inputs for glass plano

<sup>18</sup> See AGCM decision n. C12125 of 25 January 2018, published in the Bulletin n.4/2018 available on the AGCM website.

<sup>19</sup> See AGCM decision n. C12139 of 24 April 2018, published in the Bulletin n.18/2018 and available on the AGCM website.

<sup>20</sup> See AGCM decision n. C12183 of 19 November 2018, published in the Bulletin n.44/2018 and available on the AGCM website.

lenses and glass blanks to its competitors in the downstream market for the sale of sunglasses, with detrimental effects on competition in the downstream market.

55. At the same time, assessing competition in a dynamic context, Luxottica's competitors would have no longer incentives to share their innovation projects with Barberini, being no longer an independent supplier, and this could have slowed or stopped the growth of these operators and, at least for some, the exit from the market. Therefore, the Authority considered that the concentration would lead to negative effects on innovation and investments in the medium term because post-merger Luxottica would have been the only operator able to offer innovative products in the lens production market, with likely effects on the lower overall innovation rate in the value chain and, therefore, delivering a lower variety and quality of products to final consumers.

56. In authorizing the transaction, the Authority imposed a remedy package to allow Luxottica's competitors to secure supplies from Barberini and to get access to its innovative products. In particular, Luxottica shall allow with all market operators to enter into contracts for the supply by Barberini of glass blanks and plano lenses, with no minimum purchase requirements. In addition, the contracts must allow Barberini's customers to access, where requested, products resulting from the innovation and technological developments of Barberini, even where such products are covered by intellectual property rights. A trustee is in charge of monitoring the compliance with the remedies imposed on Luxottica and is required to submit to the Authority, every six months, a report on the full and effective implementation of the prescribed measures.

### *3.2.3. Merger remedy practice between 2007-2017*

57. In 2018, the AGCM carried out an internal assessment of its merger remedy practice over the period 2007-2017, by analyzing all concentrations authorized with remedies after in-depth review during this period. The goal of such assessment is to gain a better understanding on the implementation and effectiveness of past merger remedies.

58. Out of 46 concentrations reviewed in Phase two, 24 transactions were cleared with remedies, in particular structural remedies (five cases), behavioral (six cases) and hybrid remedies (in eleven cases). In most of the cases the combined use of structural and behavioral remedies was aimed at alleviating the same competition concern.

59. In the context of the 24 transactions cleared conditionally, the Authority imposed 147 remedies<sup>21</sup>, an average of 6 remedies per merger decision. The breakdown of the 147 remedies is the following: 73 structural remedies (49.7%), 69 behavioral remedies (46.9%) and 5 "para-structural" remedies (3.4%), such as access remedies. The most frequent structural remedies were the sale of outlets/stores/branches (71%), followed by the divestiture of financial shareholdings (11%) and the divestiture of business branches (e.g., brand/client portfolio, business unit, production plants), while the divestiture of ongoing standalone business entities represented the 7% (5 cases). In relation to behavioral remedies, the most important category is represented by the measures prohibiting personal /structural links between competitors and interlocking directorates. The economic sectors attracting the highest number of remedies were the insurance/banking sectors and the retail distribution sectors which underwent a phase of restructuring during the 2007-2017 period.

<sup>21</sup> In this ex-post assessment study, a remedy has been defined as a group of measures aimed at fixing the same competition concern in the same relevant market: e.g., divestiture of 3 outlets in the same geographic market is considered as one remedy.

60. With respect to the implementation, structural remedies were executed in a timeframe between 12 and 24 months in more than half of the cases while 48% of behavioral remedies were implemented at the time of the closing of the investigation.

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

##### **4.1. Opinions and recommendations**

61. In 2018, pursuant to Articles 21 and 22 of Law no 287/90<sup>22</sup>, the Authority issued 63 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: public utilities (waste and water), public transport, communications, health and tourism (e.g., non-hotel accommodation services). In one opinion, the AGCM advocated for a revision of the concession regimes in several economic sectors (motorways, airports, gas distribution, ports, TV broadcasting etc.) as described in section 3.1.1. below.

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<sup>22</sup> 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 5. Reporting and advocacy, according to economic sector**

(number of interventions carried out in 2018 pursuant to art. 21 and 22)

Sector	# of opinions	2018
Energy		13
	Electricity and gas	5
	Oil industry	2
	Waste disposal	6
Communications		9
	Information technology	3
	Telecommunications	5
	Publishing	1
Finance & Postal		6
	Postal services	4
	Insurance services	2
Food & Pharma		4
	Food and drink industry	1
	Pharmaceutical industry	3
Transport		6
Services		23
	Services (others)	13
	Health services	3
	Leisure, cultural and sporting activities	2
	Tourism	4
	Other manufacturing activities	1
Total		63

62. In addition, pursuant to article 21-bis of Law no 287/90<sup>23</sup>, the AGCM issued 21 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. One opinion was adopted against a public administration 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<sup>24</sup>.

<sup>23</sup> 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.

<sup>24</sup> See section 1.1 above. The AGCM can intervene ex-post, using its Art. 21-bis power, to ensure the correct application of the provisions regulating state-owned enterprises.

**Table 6. Reporting and advocacy, according to economic sector**

(number of interventions carried out in 2018 pursuant to art. 21 bis)

Sector	# of opinions	2018
Energy		13
Electricity and gas	5	
Oil industry	2	
Waste disposal	6	
Communications		9
Information technology	3	
Telecommunications	5	
Publishing	1	
Finance & Postal		6
Postal services	4	
Insurance services	2	
Food & Pharma		4
Food and drink industry	1	
Pharmaceutical industry	3	
Transport		6
Services		23
Services (others)	13	
Health services	3	
Leisure, cultural and sporting activities	2	
Tourism	4	
Other manufacturing activities	1	
Total		63

#### 4.1.1. Description of significant advocacy interventions

##### *Hearing and opinion N. AS1550 on general framework of State concession regime*

63. In December 2018, the AGCM issued a report to the Government and the Parliament on the current status of the administrative concessions in Italy, underlining the main competition issues encountered in a number of sectors as a result of the distorted use of the concession instrument. As regards motorways, the Authority expressed its views in October 2018 during a hearing before the Deputies Chamber<sup>25</sup>, on the law decree so-called "Genoa and other emergencies", which basically urged direct negotiations instead of tender procedures in relation to the reconstruction of a bridge in Genoa city.

64. At the hearing, the AGCM called for the use of competitive tender procedures for the awarding of the service, by abandoning the direct award mechanism and the practice of unjustified extensions of concessions or automatic renewals. In addition, the Authority contested the long durations of motorways concessions which are not commensurate to the characteristics of investments and unjustifiably reduce the already limited scope for

<sup>25</sup> Hearing of the Secretary General Filippo Arena before the Committees VIII and IX of the Chamber of Deputies and Senate for an opinion on a legislative decree concerning, inter alia, the concession regime of the national network of transport infrastructures, 10 October 2018. The text of the hearing is available on the AGCM website.

competitive pressure. With respect to the law decree, the Authority recognized the context of urgency as a valid justification for the derogation from the award of the service through a tender procedure; nevertheless, the AGCM observed that the derogation should be limited to what is strictly necessary to handle the urgency of the intervention of reconstruction of the motorway and should, in any case, be respectful of the principles of transparency and non-discrimination. Finally, the AGCM welcomed the government efforts to complete the regulatory framework for existing motorway concessions, by entrusting the Transports Regulator (ART) with the supervision of existing motorway concessions; to foster competition, the Authority also suggested to extend the powers of the Transports Regulator to the definition of the new call for tenders when the current concessions expire.

65. In its follow-up opinion of December 2018<sup>26</sup>, the Authority advocated for a general revision of the concession framework in Italy, with particular reference to the scope, duration and renewal/extension of concessions. First of all, the initial policy decision of regulating a given economic activity through the granting of a State concession should be grounded in rigorous economic analysis; secondly, concessions should be granted through competitive tender procedures as they can help achieve efficiency and maximize welfare effects; thirdly, in designing the concession, their scope and duration must be limited and justified by the technical and economic requirements and by the characteristics of the investments; finally, automatic renewals and extensions should be avoided while criteria favouring incumbent operators should be given lesser weight.

66. Therefore, the report includes proposals for amending existing legislation and related guidelines to contracting administrative authorities in order to promote market intelligence activities to explore and compare the various alternatives present in the market for a more informed choice, especially in relation to non-price dimensions such as quality, including in terms of safety, of the service rendered to the local community.

67. Specific recommendations were proposed by the Authority in various sectors including transport (motorways, airports, port and maritime concessions) gas distribution, postal services, TV and radio broadcasting and the 700 MHz bandwidth frequencies for the (5G) mobile telecommunications services.

#### *Hearing and opinions on the opening hours of commercial distribution and other restrictions*

68. In a hearing in October 2018 before the Deputies Chamber with respect to a draft law on “Regulation of the opening hours of commercial distribution”, which basically imposed the closing of commercial outlets on Sundays with the goal of protecting smaller independent shops, the Authority advocated the repeal of such provision which would represent a setback to the liberalization process of the commercial distribution sector<sup>27</sup>.

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<sup>26</sup> See AGCM opinion n. AS1550 – CONCESSIONI E CRITICITÀ CONCORRENZIALI, in Bulletin no. 48/2018 available on the website. For an English version of the press release, click [here](#).

<sup>27</sup> Hearing of the Acting Chairperson Gabriella Muscolo before the Committee X of the Chamber of Deputies for an opinion of the regulatory regime of the opening hours for commercial shops, 18 October 2018.

69. Over the past decades, the AGCM has extensively used its advocacy powers with the aim of promoting a pro-competitive reform of this sector including the full liberalization of the opening hours of commercial outlets. The Authority has always highlighted that the opening time - together with the price and characteristics of the service - is a relevant competitive variable. AGCM advocacy efforts culminated in the successful adoption of the Law n. 214/2011 (which converted the Law Decree n. 201/2011) which suppressed any restriction related to the opening hours and days of opening/closing of commercial outlets, leaving any decision in that regard to the autonomy of operators.

70. In the hearing, the Authority outlined that any modification of the existing legislation should be respectful of the principle of proportionality without disregarding the principles of liberalization, which have been introduced after a long and fruitful dialogue with the legislator with the purpose to adapt the legislation of commerce to the emerging new needs of consumers.

71. The Authority maintained that the full liberalization of opening hours (including also Sundays) represents an opportunity and not an obligation, as commercial operators can decide autonomously when to open and close their shops based on their autonomous assessment of market characteristics providing to consumers the widest possibility of choice. Also, while for food products the possibility to purchase on Sundays mainly substitutes purchases from other days of the week, for non-food products such possibility generates incremental revenues for operators.

72. The Authority observed that such prohibitions would provide a way to protect traditional offline retailers from competition of online players and that the need to protect small enterprises – which have an economic and social value – can be pursued through measures that are less restrictive of competition. For instance, direct measures can be envisaged to support innovation and digitalization (for example, in terms of management of the supply chain or reporting or the adoption of electronic means of payment) which help traditional shops to keep their competitiveness.

73. Attempts to introduce restrictions on opening and closing times or certain quantitative restrictions also occurred at regional level.

74. In May 2018, the Authority issued an opinion on request by the Sicily Region, with respect to a draft regional law imposing on commercial activities the obligation to close for at least five days in 2018<sup>28</sup>. The AGCM noted that such provision was liable to introduce unjustified limits to the freedom of economic activity, as well as in clear contrast with previous liberalization reforms, in particular those approved in 2011, which provided that commercial activities are carried out without observance of any type of constraints in terms of opening and closing times, including during Sunday and holiday periods.

75. In November 2018, the Authority, at the request of the Ministry of Economic Development, carried out a competition assessment of the compatibility with competition principles of a number of restrictions to the exercise of the optician activity provided by the art. 1 of the law of the Sicily Region of 9 July 2004, n. 12<sup>29</sup>. This provision

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<sup>28</sup> See opinion n. AS1515 – Regione Sicilia – Obblighi di chiusura attività commerciali per cinque giorni l'anno, published in the AGCM Bulletin n. 23/2018.

<sup>29</sup> See opinion n. AS1554 - Regione Sicilia - Disciplina dell'esercizio dell'attività di ottico, published in the AGCM Bulletin n. 2/2019.

subordinates the opening of a new optician outlet to the release of a prior administrative authorization, provided that certain quantitative restrictions are met such as the minimum distance between optical stores (300 metres) and the optician/population ratio (one every 8,000 residents).

76. The Authority stated that such quantitative restrictions are suitable to unduly freeze the supply side and prevent the market to dynamically adjusted to demand conditions and preferences. In addition, the AGCM recalled that the optician profession is not included in the health professions regulation as it provides an ancillary service to that one of the ophthalmology specialist: in fact, the optician suggests and supplies glasses and/or contact lenses to improve and protect the visual deficiencies, but cannot carry out diagnosis, therapeutic/surgical activities and prescriptions of drugs, although being authorized to use specific equipment to assess the quality of the vision. The Authority also noted that the activity of optician also presents an undeniable commercial nature being aimed at selling to the public a wide range of products, not just medical devices.

77. In conclusion, the Authority advocated for the removal of the above quantitative restrictions on the supply side as they could be not justified on necessity and proportionality grounds

*Opinion N. ASI536 on the authorization to distribution to the public through the parapharmacy channel of certain products<sup>30</sup>*

78. The Authority has intervened several times to advocate a pro-competitive reform in the distribution of pharmaceuticals. In 2014, when issuing a comprehensive advocacy report to advise the government on potential liberalization reforms to include in the draft annual law for competition, the Authority advocated for the elimination of restrictions on the opening of new pharmacies and the possibility for para-pharmacies and authorized drug corners in supermarkets to sell drugs requiring a prescription but charged entirely to the patient. While some progress have been made at national level, the degree of implementation at regional and local level varied substantially.

79. In September 2018, the Authority issued an opinion to all Regions and the Department of Health in relation to the differentiated approaches taken by Regions when granting parapharmacies the authorization to sell, on behalf of the National Health System, medical devices, products for diabetics and foods for specific medical purposes.

80. In this opinion, the Authority underlined the importance of the parapharmacy channel in promoting competition in the sector of distribution and sale of pharmaceutical products and in the provision of services related to health services, and it noted that the exclusion of this channel from the possibility of offering these additional products and services would impact the product range by impairing competition with the traditional channel of pharmacies. The Authority has therefore expressed concerns in relation to the refusal by some Regions to enter into agreements with the parapharmacies for the sale of medical devices and food for specific medical purposes, since this practice resulted in a discrimination between different channels of sale, with loss in consumer welfare especially in terms of fewer stores where to buy a particular product.

81. According to the Authority, such discrimination between channels does not have its basis in the applicable laws noting that Regions can, through agreements stipulated at

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<sup>30</sup> See opinion n. ASI536 - Convenzionamento delle parafarmacie ai fini della vendita di dispositivi medici e di alimenti per fini medici, published in the AGCM Bulletin n. 39/2018.

the local level, supply these products through pharmacies as the main but not exclusive distribution channel. Furthermore, the Authority considered that the exclusion of parapharmacies cannot be justified on public health grounds, since the law also requires the presence of a pharmacist in the premises of parapharmacies. In conclusion, the AGCM invited the Regions to adopt the measures allowing parapharmacies, like pharmacies, to sell medical devices and food for specific medical purposes.

*Opinion N. AS1542 on a new regulation for non-hotel accommodation services<sup>31</sup>*

82. In recent years, the Authority has used its set of advocacy powers to argue against attempts to undermine the growth of innovative services through restrictive regulation in a number of sectors, including non-hotel accommodation and home-restaurant services<sup>32</sup>. Between 2015 and 2017, the AGCM has twice challenged before the administrative courts the new regulation of Lazio Region in relation to non-hotel accommodation services. More recently, in August 2018, the Authority issued an opinion ex-art. 21 *bis* of the Competition Act to the Piedmont Region in relation to its new regulation introducing similar restrictions in the provision of non-hotel accommodation services in Piedmont Region. In particular, the AGCM advocated for a revision of all restrictions limiting the freedom of the economic operators in determining important aspects of their offers, such as minimum operational requirements (e.g., in terms of floor space and number of rooms), closing periods and limitations to the opening hours and minimum quality standards, which adversely affected their ability to compete vis-à-vis hotel accommodation services. While recognizing the relevance of other public interest objectives, the Authority called for an assessment of the necessity and proportionality of such requirements with respect to the objective competition.

83. The AGCM also noted that the limitations on home restaurant activity imposed on non-hotel accommodation facilities do not appear justified as they limit the possibility of extending their offer of non-hotel services with food and beverage preparation and administration services. Furthermore, imposing on non-hotel accommodation providers the obligation to employ mainly typical products in the preparation and supply of food and beverages was deemed to be an unjustified restriction, which could negatively affect the quality and variety of the offer of these services.

84. Following receipt of the reasoned opinion, the Piedmont Region informed the Authority that it considers such requirements legitimate. Therefore, the Authority filed an appeal before the competent administrative tribunal (TAR Lazio); the dispute is still pending.

## 4.2. Monitoring of advocacy activities and market studies

85. 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

<sup>31</sup> See opinion n. AS1542 - Regione Piemonte - Nuovo regolamento per le strutture extralberghiere non imprenditoriali, published in the AGCM Bulletin n. 43/2018.

<sup>32</sup> See AGCM contribution to the June 2018 OECD Roundtable on “Implications of E-commerce for Competition Policy”, BOX 3 and BOX 5, available at: [https://one.oecd.org/document/DAF/COMP/WD\(2018\)32/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2018)32/en/pdf)

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

86. The latest results, regarding the period 2016-2017, were published in May 2018<sup>33</sup> and an a description can be found in the 2017 annual report. 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. In relation to opinions under art. 21-bis which empowers the Authority to challenge an administrative act in case of non-compliance with the AGCM opinion, in 48% of cases (27 out of 56), the acts were amended following the opinion adopted by the AGCM, compared to 38% of negative outcomes (21 cases). In most cases with negative outcomes, the AGCM appealed the administrative acts before the administrative judge.

87. During 2018, the AGCM continued to carry out the market study on big data in cooperation with the Italian Communication Regulator and the Italian Data Protection Authority, publishing in June 2018 interim results of the consumer survey, which involved a sample of online service users. The findings<sup>34</sup> 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. 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. The final findings are expected to be published in 2019.

## 5. Resources of competition authorities

### 5.1. Resources

#### 5.1.1. Annual budget

88. The Italian Competition Authority does not have a specific competition-related budget. The overall expenditure incurred in 2018 amounted to €55.3 million (€59.4 m in 2017). 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).

89. 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 and confirmed in March 2019. The revenue from these contributions replace all previous forms of funding (merger fees and public budget).

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<sup>33</sup> An English version of the latest report (May 2018) is available on the AGCM website. The previous monitoring reports are available in this section.

<sup>34</sup> For more information, see the English version of the press release of 8 June 2018, available on the AGCM website.

### *5.1.2. Number of employees*

90. The total number staff of the AGCM at the end of 2018 was 285. 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).

91. 126 officers work in the area of competition (29 as support staff and 97 as non-administrative staff). The non-administrative staff is composed of 48 lawyers, 42 economists and 7 other professionals.

## **5.2. AGCM Board**

92. In December 2018, Mr Roberto Rustichelli was appointed by the Presidents of the Italian Chamber of Deputies and Senate as the new Chairman of the AGCM to serve a seven year mandate that is not renewable. Chairman Rustichelli took office on May 6<sup>th</sup>, 2019, after the completion of the authorization procedure of the Italian High Council of the Judiciary (Consiglio Superiore della Magistratura). He is a Judge and President of Court for Enterprises in Naples.