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Annual Report on Competition Policy Developments in Italy

-- 2021 --

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Italy

Executive Summary

1. This report covers the enforcement and advocacy activities performed in the past calendar year (1 January 2020 to 31 December 2021) 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 April 2022.
2. In 2021, the Authority’s enforcement records have been impressive despite the difficulties posed by the pandemic-related restrictions to its operations. The AGCM closed 14 antitrust investigations, ascertaining violations in 5 cases (two anticompetitive agreements and three abuses of dominant position), accepting commitments in other six cases and dismissing the initial allegations in three instances. On merger control, the Authority assessed 73 transactions, six of which required an in-depth review, leading to five conditional approvals and one full clearance.
3. The **development of a competitive digital economy** remains a key priority for the AGCM, as shown by three high-profile cases. First, the Authority ascertained an anti-competitive agreement between Apple and Amazon to restrict sales from certain Apple resellers on the Amazon.it marketplace. In another case, it imposed a set of behavioural remedies to Amazon with a view to restoring competition in the growing market for e-commerce logistics services, harmed by the company’s abuse based on its self-preferencing policy. Finally, in another abuse case concerning Google, the Authority imposed an interoperability remedy to allow the development of competing mapping services related to electric car recharging stations, with a relevant impact on sustainability. In the latter two cases, the AGCM intervention has contributed to the development of the sectors involved, also via the imposition of remedies that were based on proposals voluntarily conceived by the parties in the course of the investigation.
4. In **merger control**, the Authority carried out in-depth review in six cases, two of which involved expanding markets requiring an in-depth analysis of existing and potential competitive dynamics. In the markets for digital payments, the Authority accepted behavioural and structural remedies proposed by the parties in order to eliminate possible forms of discrimination, while in the electric mobility sector it authorized the transaction without conditions in light of evidence of new entry.
5. In order to increase **transparency and accountability of its activities** and measure its contribution to social welfare, in 2021 the Authority carried out an assessment of the expected benefits that consumers derive from its antitrust and merger decisions, following an OECD methodology. Over the entire period under consideration (2015-2020), total consumer savings exceeded 5 billion euros. In the last three years, the annual savings for the national economy by competition law enforcement amounted to an average of 1.1 billion euros.
6. On the **advocacy front**, a major achievement has been the Authority’s contribution to the Government’s multi-year economic reform to be implemented through the National Recovery and Resilience Plan, an EU-funded instrument to help post-pandemic economic recovery of EU Member States. Since competition represents one of the pillars of the Plan, the Government solicited an input from the Authority which, in March 2021, formulated a

package of reform proposals, built on a number of priorities: the promotion of investment in strategic infrastructures to sustain economic development, such as energy and digital infrastructures; the streamlining of rules on public procurement; the liberalization of local public services; the promotion of innovation and environmental sustainability.

7. Most of the reforms proposed by the AGCM have been included in the Plan and some of them are expected to be approved by the Parliament at the end of 2022. Moreover, in 2021 the AGCM continued its ordinary advocacy activity, by issuing 95 opinions/recommendations addressed to central and local authorities in numerous sectors and economic activities.

8. Finally, in 2021 the Italian Competition Act has been amended by the legislative decree No. 185 of 29 November 2021, transposing the **EU Directive 1/2019 (ECN+ Directive)** which strengthens the investigative and sanctioning powers of the AGCM as well as the other authorities of the European Competition Network (ECN). In particular, the decree enables the Authority to impose higher pecuniary sanctions to association of undertakings and more generally prescribe behavioural and structural remedies to complement cease and desist orders; regulates the interplay between leniency immunity and criminal charges for individuals; strengthens the mutual assistance between the Authority and the other members of the ECN and introduces periodic penalty payments and providing turnover-based fines for procedural infringements.

9. Other important changes to the competition law framework have been included in a draft law currently under review by the Parliament. The changes mainly affect the Italian merger control system, calling for a harmonization with the European rules (for example with respect to the substantive test) and the introduction of a new system to review transactions falling below the applicable thresholds in order to capture local mergers and acquisitions of nascent competitors. Finally, the draft law strengthens the existing rules on abuse of economic dependence in order to account for the intermediation power of digital platforms.

1. Regulatory and Policy Developments

1.1. Changes to the Authority's powers as a result of the transposition of the EU Directive 1/2019

10. Italian Legislative Decree No. 185/2021 (the Decree), which entered into force on December 14, 2021, transposes Directive (EU) 2019/1 (the ECN+ Directive), which provides for minimum standards to ensure that the national competition authorities (NCAs) of the European Competition Network (ECN) have the instruments, resources and sanctioning powers to apply the EU competition rules - Articles 101 and 102 of the Treaty of the Functioning of the European Union (TFEU) - effectively. The Decree amends the Italian Competition Act (Law No. 287/90) by codifying a series of investigative tools and powers that had already been developed in practice by the AGCM as well as providing with new investigative and sanctioning powers.

11. First, the Decree grants the Authority the **possibility to set its priorities** and focus on matters it considers to be of major importance, thus allowing a better allocation of its resources.

12. Second, the Decree comprises a series of **measures to reinforce the independence** of the AGCM board members and staff, although the current national regulatory framework is already largely aligned with the organizational standards required by the ECN+

Directive. The Decree adds a three-year cooling-off period for the AGCM board members and staff before taking positions dealing with enforcement proceedings that could give rise to conflicts of interest.

13. The Decree **strengthens the Authority's investigative powers** by allowing for, among other things: i) inspections on all premises, land and means of transport of the undertaking inspected as well as private premises of its employees; ii) inspection and acquisitions of copy of documents on any medium, which also entails wider access to companies' virtual data during dawn raids; and iii) summons for interview of any representative of a company or any individual who may possess information relevant for the investigation.

14. Moreover, the Decree grants the Authority with the power to impose **behavioural as well as structural remedies** necessary to bring an infringement to an end, in cases of established infringement of Articles 101 and 102 TFEU, thus aligning the powers of the AGCM with those of the European Commission.

15. The Decree introduces a number of amendments aimed at encouraging companies involved in the investigations to cooperate with the AGCM, by **strengthening the Authority's sanctioning powers**.

16. With respect to fines for **substantive infringements**, the Decree brings two important novelties. It imposes a 10-year absolute limitation period¹ and envisages **higher fines for associations of undertakings and liability of members**². In particular, it provides that, if the infringement committed by an association of undertakings concerns the activities of its members, the amount of the sanction is up to 10% of the sum of the global turnover of each member (even those that did not participate in the infringement) active on the market affected by the infringement³. In addition, the Decree also provides for joint and several financial liability of the members of the association⁴.

17. As for **procedural infringements**, lump sum fines are now replaced by turnover-based ones: the Authority may impose a fine of up to 1% of the company's total worldwide turnover for failure to cooperate during an inspection, provide information, appear at an

¹ The previous regime did not expressly provide for limitation periods for the imposition of antitrust fines. The new 10-year limitation period is interrupted for the duration of enforcement proceedings before the national competition authorities of other Member States or the European Commission, in order to restart after the interruption. The limitation period is suspended for the period of judicial review of the AGCM decisions.

² Under the previous regime, fines imposed by the AGCM on associations of undertakings were based on the total value of the membership contributions paid by their members, with the consequence that, usually, the amount of the fines was very limited.

³ However, the financial liability of each member cannot go beyond the cap valid for individual undertakings (10% of the total turnover).

⁴ First, when the sanction for the association is based on the turnover of the members and the association is insolvent, the Authority can order the association to request its members to contribute with funds to the sanction payment; second, if these funds are not provided to the association in a timely manner, the Authority can then directly request the companies whose representatives were members of the decision-making bodies of the association to pay the fine; and third, if necessary to ensure the full payment of the sanction, the AGCM may also require any members of the association active on the market affected to pay the remaining amount of the sanction to be paid, unless the member concerned demonstrates that it did not take part in the anticompetitive decision of the association or was not aware of this decision or actively disassociated itself from it before the launch of the AGCM investigation.

interview. More importantly, the Decree introduces periodic penalty payments of up to 5% of the company's daily turnover for each day of delay in complying with the AGCM's requests. To further strengthen its investigatory powers, the Decree provides for administrative fines and periodic penalty payments for individuals who, intentionally or negligently: (i) obstruct the inspection; (ii) provide incorrect, incomplete or misleading information in response to a request for information; or (iii) fail to appear at an interview.

18. Finally, the Decree introduces a number of amendments aimed at strengthening **cooperation between the NCAs of the ECN**, in particular in terms of mutual investigative assistance. Moreover, officials of NCAs of other Member States can be permitted to attend and actively assist the AGCM's staff in inspections and hearings conducted by the Authority. The Decree also provides for mutual assistance to ensure cross-border notification of key procedural acts (e.g., decision to open an investigation or the statement of objections) and assistance to execute sanctioning decisions cross-border.

1.2. Changes to the leniency programs as a result of the transposition of the EU Directive 1/2019

19. The Decree includes provisions on immunity and leniency applications which largely mirror those set out in the AGCM's notice on the national leniency program and harmonize the national procedure at the European level.

20. With regard to access to leniency statements, the Decree introduces measures to ensure confidentiality of leniency statements and therefore the attractiveness of leniency programs. First, the Competition Act now expressly provides that leniency statements will only be accessible by the parties to the proceedings concerned in the leniency application. Second, it introduces a limitation in relation to the use of the information contained in leniency applications: the information may only be used either in the context of the infringement proceedings to respond to the allegations put forward by the AGCM or in appeals before the national courts. Finally, leniency statements may be exchanged between the NCAs of the Member States of the European Union, only (i) with the consent of the leniency applicant; or (ii) if the NCA receiving the leniency statement has already received a leniency application concerning the same infringement, submitted by the same leniency applicant, provided that the applicant does not have the possibility of withdrawing the information it has previously provided to the receiving authority.

21. Furthermore, the Decree addresses the interplay between leniency programs and sanctions that may be imposed on individuals, including criminal, in cases where the anticompetitive infringement may also involve a crime, e.g., bid rigging and insider trading. To tackle the lack of companies' incentives to submit an immunity application, as the latter could still expose staff to individual penalties, the Decree introduces new rules extending the effects of the immunity application to individuals, establishing the conditions under which they are no longer punishable under criminal law, including if they actively collaborate with the AGCM and the public prosecutor.

1.3. Other proposed changes to the Italian Competition Law

22. In February 2021, the Italian Government decided to include competition as one of the pillars of its National Recovery and Resilience Plan, a recovery instrument funded by the EU to address the health and economic crisis brought about by the pandemic. Therefore, the Government solicited an input from the Authority in order to identify the most suitable pro-competitive measures which would ensure a more rapid and robust economic growth

and with a view of adopting such measures gradually, through annual laws on pro-competitive reforms over the period 2022-2026.

23. In response to Government's request for input, the AGCM submitted in March 2021 a comprehensive advocacy report with recommended reforms to strengthen competition in key sectors of the Italian economy as well as several suggested amendments to the national competition law. Following the advocacy report, in November 2021 the Government presented to the Parliament a draft law containing several economic reforms advanced by the Authority (see section 3.2.1 below) and changes to the competition law framework, as described below.

24. As for **merger control**, the draft law envisages:

- A harmonisation with the EU law in particular with respect to the substantive test (replacing the dominance test with the SIEC), the notion of joint venture (eliminating the notion of cooperative JV) and the role of efficiencies (including an explicit reference to them in the weighing with the anti-competitive effects)⁵.
- A review of transactions falling below the applicable thresholds in order to capture acquisitions of nascent competitors. The Authority may require the notification of a transaction when: i) there is prima facie risk that the concentration would harm competition on the Italian market (or on a relevant part of it), *“also taking into account the detrimental effects for the development and diffusion of small enterprises characterized by innovative strategies”*⁶; ii) the transaction has occurred at most 6 months before the notification order; iii) the transaction meets one of the two applicable filing thresholds (i.e., either the combined turnover in Italy of the undertakings concerned higher than EUR 511 million or turnover in Italy of at least two of the undertakings concerned higher than EUR 31 million) or when the worldwide overall turnover of the undertakings concerned is higher than EUR 5 billion.

25. Another important change envisaged in the draft law concerns art. 9 of Italian law no. 192/1998 which prohibits the **abuse of economic dependence** by entrusting its enforcement to the AGCM. The existing rules on abuse of economic dependence are amended to account for the intermediation power of digital platforms. The draft law introduces a rebuttable presumption of economic dependence for those operators dealing with digital platforms offering intermediation services when the latter represent a key gateway in reaching end users and/or suppliers. Furthermore, it indicates a non-exhaustive “black list” of conducts which builds upon the prohibitions stemming from Article 102 TFEU.

26. On the procedural side, the draft law provides for the introduction of **settlements** and further strengthens the Authority's **investigation tools** before the launch of formal proceedings (for Art. 101 & 102 TFEU and national equivalents) and during market studies, by applying the same sanctions envisaged for formal investigations in case of failure to cooperate with the AGCM.

27. The draft law is being discussed and expected to be enacted by the Parliament by the end of 2022.

⁵ The AGCM also proposed an extension of the Phase Two review period (from the current 45 calendar days to 90 calendar days) to align it with European and international best practices; however, this proposal has not been implemented in the government bill.

⁶ The latter part in italics was not included in the original AGCM proposal.

2. ENFORCEMENT OF COMPETITION LAWS AND POLICIES

2.1. Action against anti-competitive practices, including agreements and abuse of dominant position

2.1.1. Summary of activities

28. During 2021, 25 proceedings were concluded: 7 concerned restrictive agreements, 7 abuses of dominant position, 6 mergers requiring an in-depth assessment and 5 addressed other matters such as redetermination of the pecuniary sanctions and non-compliance with merger notification obligations (see tables 1 and 2).

Table 1. Activity of the Authority

2021	
Anti-competitive agreements (incl. cartels)	7
Abuses of dominant position	7
Merger transactions examined (in phase two)	6
Non-compliance with cease and desist order or merger notification obligations	3
Redetermination of sanctions	2
TOTAL	25

Table 2. Proceedings concluded in 2021, 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
Anti-competitive agreements (incl. cartels)	-	7	-	7
Abuse of dominant position	2	4	1	7
	Clearance	Prohibition, authorisation subject to remedies, revision of remedies	No jurisdiction or inapplicability of the law	Total
Mergers of independent enterprises	63	5	5	73

29. In 2021, the Council of State (the Supreme Administrative Court) fully upheld on the merits 9 out of 9 Authority's decisions while the TAR Lazio (Administrative Court of First Instance) confirmed 10 of 14 decisions on the merits.

Anti-competitive agreements

30. In 2021, the Authority uncovered one cartel and ascertained one anti-competitive agreement, imposing sanctions for an overall amount of EUR 175 million. Commitments

proposed by parties were accepted in five investigations concerning horizontal agreements, including a project to build a database in the insurance sector (see section 2.1.2 below).

31. During 2021, the AGCM launched six proceedings for suspected breaches of articles 101 TFEU, two of which concerning bid-rigging allegations signalled to the AGCM by the procurement agencies⁷. In another case, the Authority opened an investigation as to whether 13 insurance companies and four price comparison platforms exchanged commercially sensitive information by sharing reports prepared by the comparison sites⁸.

Abuse of dominant position

32. As regards abuses, four out of seven investigations were concluded with the ascertainment of a violation of art. 102 of the TFEU and one with a commitment decision. The three infringements attracted sanctions for an overall amount of EUR 1.2 billion. The Authority's most relevant intervention relates to the e-commerce logistics sector, by sanctioning for EUR 1,230 million the conduct of the Amazon group aimed at favouring its own logistics services, discouraging sellers on Amazon.it from availing of third-party providers (see section 2.1.3 below).

33. In other two cases, the Authority closed the proceedings with no ground for action. An abuse of dominance investigation in the market for the production of PET containers showed that not every discrimination by a vertically integrated company against rivals in downstream markets is likely to distort competition⁹. In another case involving diagnostic devices, the decision dismissing the initial allegations recognised the importance of competition driven by innovation and IP over that driven by imitation¹⁰. In one remaining case, the investigation was dropped as the competence over the case was assumed by the European Commission ex art. 11 (6) of Regulation (CE) n. 1/2003¹¹.

34. In 2021 the AGCM launched five investigations into abuse of dominant position. One case concerns a waste management company which abused of its dominance by refusing access to its landfill, according to a rival waste treatment company¹².

⁷ See AGCM case no. 1845 - *GARA MANUTENZIONE PAVIMENTAZIONI TRATTE AUTOSTRADALI DI MILANO SERRAVALLE - MILANO TANGENZIALI*, opening decision no. 29683, published on the AGCM Bulletin no 24/2021 and available on the [AGCM website](#). AGCM case no. 1847 - *GARE D'APPALTO BANDITE DALL'ARSENALE MARINA MILITARE DI TARANTO*, opening decision no. 29759, published on the AGCM Bulletin no 31/2021 and available on the [AGCM website](#).

⁸ See AGCM case n. 1856 - *COMPARATORI DI PREZZO/SCAMBIO DI INFORMAZIONI POLIZZE RCA*, opening decision no. 29658, published on the AGCM Bulletin no 21/2021 and available on the [AGCM website](#).

⁹ See AGCM case no. A537 - *MERCATO DELLA PRODUZIONE DI CONTENITORI IN PET*, final decision no. 29869, published on the AGCM Bulletin no 45/2021 and available on the [AGCM website](#).

¹⁰ See AGCM case no. A517 - *MERCATI DI MANUTENZIONE DI DISPOSITIVI DIAGNOSTICI*, final decision no. 28620, published on the AGCM Bulletin no 21/2021 and available on the [AGCM website](#).

¹¹ See AGCM case no. A542 - *GOOGLE NEL MERCATO ITALIANO DEL DISPLAY ADVERTISING*, final decision no. 29845, published on the AGCM Bulletin no 43/2021 and available on the [AGCM website](#).

¹² See AGCM case no. A549 - *RIDA/ECOLOGIA VITERBO*, opening decision no. 29911, published on the AGCM Bulletin no 48/2021 and available on the [AGCM website](#).

Other legislations: abuse of economic dependence

35. The Authority has also enforced the legislation on abuses of economic dependence by imposing a €11.3 million sanction on Poste Italiane (PI), the incumbent postal service operator, for implementing unfair contractual terms which were capable of undermining the viability of Soluzioni Srl, a small company providing mail distribution and collection services in Naples on behalf of PI¹³. In 2021, the Authority launched three investigations under abuse of economic dependence, two of which concerning restrictive clauses in the franchising agreements¹⁴.

2.1.2. Description of significant cases regarding anticompetitive agreements and concerted practices*Case I842 – Vendita prodotti Apple e Beats su Amazon Marketplace*¹⁵

36. In November 2021, the Authority imposed a sanction of €134.5 million on Apple and a fine of €68.7 million on Amazon for restricting certain resellers of Apple products, including those of the Apple-owned brand Beats, from accessing the online marketplace of Amazon in Italy (Amazon.it)¹⁶.

37. The investigation was prompted by a complaint received by Digitech, a company active in the marketing of electronic products, asserting that, as a result of an agreement between Amazon and Apple, Amazon removed from its marketplace resellers of Apple, which had until then regularly and lawfully offered Apple and Beats products.

38. The AGCM's investigation focused on certain clauses of an agreement entered into on October 31, 2018 between Amazon and Apple, establishing that Amazon could not allow resellers other than those specifically identified in such agreement to use Amazon.it in order to sell Apple and Beats products.

39. According to the Authority, in absence of a selected distribution system based on clear and objective criteria, Amazon and Apple through the agreement introduced a purely quantitative restriction on the number of resellers operating on Amazon.it, identified in a discriminatory manner, thus preventing them from accessing Italy's most important distribution channel for online sales, especially for small and medium sized enterprises. Moreover, the agreement restricted cross-border sales, as it prevented sales of Apple and Beats products to resellers established outside certain EU Member States. These resellers were also discriminated against because of their geographical origin. Finally, according to the AGCM, the agreement affected the discounts available for Amazon and Beats products sold on Amazon.it. In particular, the Authority argued that, by restricting the number of

¹³ See AGCM case A539 - *POSTE ITALIANE/CONTRATTI FORNITURA SERVIZIO RECAPITI*, decision no. 29782 of 20/07/2021, published on the AGCM Bulletin no. 32/2021 and available on the [AGCM website](#).

¹⁴ See AGCM case no A546 - *FRANCHISING DI MCDONALD'S*, opening decision no 29793, published on the AGCM Bulletin no. 33/2021 and A550 - *CATENA DI FRANCHISING ORIGINAL MARINES*, opening decision no 29930, published on the AGCM Bulletin no. 50/2021.

¹⁵ See AGCM case no I842 - *VENDITA PRODOTTI APPLE E BEATS SU AMAZON MARKETPLACE*, infringement decision no 29889, published on the AGCM Bulletin no. 47/2021 and available on the [AGCM website](#).

¹⁶ Due to a clerical error in the calculation, the AGCM re-determined the amount of the sanctions imposed on the Parties: €114,681,657 for Apple and €58,592,754 for Amazon.

resellers allowed to use Amazon.it, the general level of discounts decreased to the detriment of consumers.

40. The Authority deemed that the agreement had significantly negative effects on competition and concluded that the agreement between Amazon and Apple infringed Article 101(1)(b) and (d) TFEU¹⁷.

*Case no. I844 – Progetto Antifrode ANIA*¹⁸

41. In September 2021, the AGCM accepted and made binding the commitments presented by the Italian Association of Insurance Companies (ANIA) with respect to its “Antifraud Project”, notified to the Authority in order to verify its compliance with Art. 101 TFEU.

42. The project involves the creation of databases and the development of common algorithms to define fraud risk indicators that insurance companies may use both in the underwriting and compensation phase. More specifically the project envisaged the set-up of (i) a platform for the exchange of information on fraudulent activities so to obtain general trends on the anti-fraud actions undertaken by the insurance companies, and (ii) a portal providing insurance companies with useful information to detect on real time fraud risks before settling the claims.

43. The relevant markets concerned by the project are the production and distribution of life and non-life insurance products. While acknowledging the costs of fraudulent activities to the industry, the AGCM view considered that the project as originally notified raised three main competition concerns. First, the Authority questioned whether the project would benefit all companies in the market or whether companies that are not members of ANIA could be excluded from the platform. Second, the Authority questioned whether and to what extent the information exchange required by the project to be successful could facilitate collusion among ANIA members by artificially increasing market transparency. Third, the development of common algorithms and the sharing of large amounts of data, including information related to the characteristics of claims and policyholders, could influence and standardize company’s business decisions, since the ability to acquire and process data requires a specific skill set and is an important parameter of competition.

44. The investigation was closed with the final commitments submitted by ANIA, after being amended following the comments received during the market test (including the comments from the Italian data protection authority and the sectoral regulator). The association will allow non-member insurance providers to access the database so the market is not closed to possible new competitors. It has further committed to allowing members to only use the platform in the settlement phase of an insurance claim, and not during the underwriting phase. The association has also committed to ensuring that the data collected on the platform is used correctly and not as a font for sharing sensitive information and, to this end, it has set up a third-party body in charge of monitoring how the data is used. Moreover, for the purposes of defining the so-called Anomaly Index, ANIA committed not to use a self-learning algorithm. Finally, ANIA undertook to report to the AGCM on the implementation of the commitments every two years.

¹⁷ Agreements or concerted practices that (b) limit or control production, markets, technical development, or investment and (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage.

¹⁸ See AGCM case no. I844 - PROGETTO ANTIFRODE ANIA, commitment decision no 29826, published on the AGCM Bulletin no. 39/2021 and available on the [AGCM website](#)

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

Case n. A529 Google/Compatibilità App Enel X Italia con Sistema Android Auto¹⁹

45. In May 2021, the AGCM imposed a fine of over 100 million euros on Alphabet Inc., Google LLC and Google Italy S.r.l. (Google) for the violation of Article 102 TFEU. Through the Android operating system and the Google Play app store, Google was found to hold a dominant position in the markets for (i) licensable smart mobile operating systems and (ii) app stores for the Android mobile operating system.

46. The Authority ascertained that Google abused its dominant position in these markets by refusing to render its Android Auto system interoperable with JuicePass, an app providing services related to the recharging of electric vehicles and developed by Enel, the main electricity operator.

47. Because Android Auto allows users to employ apps in an easy and safe way while driving, Google's conduct made JuicePass app less useful and appealing to users as compared to Google Maps which runs on Android Auto and enables functional services for electric vehicle charging. The investigation found that, due to network effects, limiting the growth of users and delaying the access on Android Auto was sufficient to undermine the possibility of success of the competing apps.

48. Over the period of two years Google expressly refused Enel's request to integrate its app in Android Auto four times while proposing two workarounds: (a) JuicePass being used on Android Auto through Google Maps (and Google Assistant) and (b) Enel working with cars manufactures to develop its app using Android SDK provided by Google.

49. In assessing the refusal to deal, the AGCM considered the following elements:

- The indispensability of Android Auto interoperability between the smartphone/tablet environment and the auto environment, in order for app developers to reach out end-users;
- The network effects of the Android Auto platform (the most used one in Italy) and winner-takes-all phenomena which could exclude an important rival at the time of significant growth of the electric mobility sector;
- The importance of (competition for) the data released by end-users through their apps in order to offer ancillary mobility services and build network of recharging stations (Enel, the developer of JuicePass is active in this area);
- The alternative solutions proposed by Google did not meet the criteria (e.g., passenger safety), contradicting Google's safety concerns raised when it rejected the interoperability.

50. As a result, Google favoured its own Google Maps app, which runs on Android Auto and provides similar services to those offered by the rival app (with the exclusion of the booking services). Therefore, the exclusionary strategy of Googles consisted of a refusal to deal which, in light of its role as gatekeeper, hindered a static a dynamic level playing field, by discriminating in favour of its own services and hindering the development

¹⁹ See Case n. A529 GOOGLE/COMPATIBILITÀ APP ENEL X ITALIA CON SISTEMA ANDROID AUTO, infringement decision of 13/04/2021, published on the AGCM Bulletin n. 20/2021. See also the AGCM press release of 13 May 2021, available in English at the following link: <https://en.agcm.it/en/media/press-releases/2021/5/A529>

of new services (the booking functionality of JuicePass app) for which there is a potential demand.

51. In its final decision, the Authority also pointed out how Google's conduct could influence the development of electric mobility in a crucial phase of its launch, in particular as regards the development of a network of infrastructures for recharging electric cars that is adequate to the growth and evolution of the demand for recharging services. Consequently, possible negative effects could occur to the diffusion of electric vehicles, to the use of "clean" energy and to the transition towards a more environmentally sustainable mobility.

52. For all these reasons, in its cease and desist order the Authority also imposed an interoperability remedy, ordering Google to make available to its rival Enel (as well as to any app developer) app programming tools that are interoperable with Android Auto. The AGCM will monitor the effective and correct implementation of the imposed obligations through an independent expert to whom Google must provide all cooperation and information requested.

53. The Authority's remedy is based on a solution proposed by Google in the course of the investigation, that is, a beta version of a new template enabling the development of apps for electric recharge electric charging, which was considered by Google the most appropriate technical solution to accommodate Enel's request.

54. The decision was appealed before the Court of First Instance in July 2021.

Case n. A528 - FBA AMAZON²⁰

55. In November 2021, the Authority fined Amazon Europe Core S.à r.l., Amazon Services Europe S.à r.l., Amazon EU S.à r.l., Amazon Italia Services S.r.l. e Amazon Italia Logistica S.r.l. (hereafter "Amazon") € 1.13 billion for a breach of Art. 102 TFEU. In particular, Amazon was found to have leveraged its dominant position in the Italian market for intermediation services on marketplaces to favour the adoption of its own logistics service - Fulfilment by Amazon (FBA) - by sellers active on Amazon.it to the detriment of the logistics services for e-commerce offered by competing logistics operators. Moreover, Amazon abuse was capable of further strengthening its dominant position by rendering costly multi-homing by sellers active on Amazon.it marketplace.

56. In defining relevant markets, the AGCM adopted a multi-market approach by defining as many relevant markets as the sides of a platform: in this case, it defined a market for e-commerce intermediation services via "horizontal" (i.e., generalist) marketplaces on the sellers' side only (e.g., all the intermediation services for sellers to reach out consumers), although the Authority indirectly considered the services provided by marketplaces to consumers (e.g., search and ranking, product reviews, refund policies). The investigation confirmed the lack of substitutability, from the retailers' point of view, between horizontal marketplaces and brick-and-mortar shops, sellers' own websites, price comparison sites search engines and other websites, and vertical marketplaces (although market definition was left open in this case).

²⁰ See AGCM case no A528 - FBA AMAZON, infringement decision no. 29925, published on the AGCM Bulletin n. 49/2021, and available at the following link: https://www.agcm.it/dotcmsdoc/allegati-news/A528_chiusura%20istruttoria.pdf. The press release in English is available at the following link: <https://en.agcm.it/en/media/press-releases/2021/12/A528>

57. In assessing the dominance, the extensive investigation of the Authority found that Amazon was dominant under different metrics²¹. Amazon's market share in 2019 was up to 5 times higher than that of its closest competitor, and such a gap has been sharply widening over the past four years. In the AGCM view, Amazon's dominant position is not contestable by competing operators even in the medium term due to significant barriers to the entry and expansion for new operators: network effects, brand recognition and consumer loyalty programs, ecosystem nature of the company active in several sectors with multiple roles.

58. According to the Authority, Amazon adopted a tying strategy by granting a set of exclusive benefits on its marketplace Amazon.it to sellers availing of its logistics service (Fulfilment by Amazon – FBA), which provides logistical support services covering every step of an online sale, from when a consumer searches for a product to when that product is delivered, including inventory management and product returns. Among the exclusive benefits for users of its FBA service, the most relevant is the Prime label, which allows sellers to reach out to 7 million most loyal and high-spending consumers who are members of Amazon's loyalty program. The investigation showed that such benefits are crucial for sellers to gain visibility, to boost sales and, in turn, to the success of sellers' offers on Amazon.it. In addition, sellers using FBA are not subject to the stringent performance indicators that Amazon applies to monitor the non-FBA sellers' performance, which can ultimately lead to the suspension of noncompliant sellers' account on Amazon.it.

59. As for the effects of the conduct, Amazon considerably expanded in the new e-commerce logistics sector. It increased the percentage of seller transactions handled with FBA from less than 30% at the beginning of 2016 to more than 80% at the end of 2019 and delivered in 2019 more than 150 million e-commerce parcels, that is more than 60% of the total parcels generated by online sales in Italy, compared to just over 20% in 2016.

60. In the Authority's view, Amazon's conduct harmed first and foremost, competing e-commerce logistics operators. The AGCM analysed the new form of logistics for e-commerce and considered the importance of reaching economies of scale. In particular, the AGCM found that Amazon's strategy succeeded in curbing the development of competing integrated logistics formulas by innovative operators, created specifically in response to the development of e-commerce. Unlike the operators already structured in B2B logistics, for the new players, specialized in B2C e-commerce logistics, the possibility of competing on equal terms with Amazon for the demand expressed by retailers active on Amazon.it does not constitute the mere expansion of their business to an additional segment, but is essential to the large-scale development of their business. Furthermore, Amazon's conduct had a secondary effect of consolidating its dominance in the Italian market of intermediation services on marketplaces, by increasing the costs of multi-homing for sellers.

61. According to the Authority, Amazon did not provide any objective justification for its conduct: in particular, the alleged superiority of FBA was not supported by convincing evidence. Moreover, the Authority's investigation found that that the attractiveness of the

²¹ In 2019 Amazon realized over 75% of marketplaces' total revenue from the supply of intermediation services to sellers. In the same year, over 70% of the total value of sellers' transactions on marketplaces in Italy occurred on Amazon.it. From 2016 to 2019, the number of monthly consumer visits on Amazon.it skyrocketed from around 80 million to over 220 million (during the same period, eBay.it's visits increased from 40 to 50 million); the number of products (in terms of range) sold by Amazon.it moved from a range of 100-200 million to 600-700; in 2019 the number of consumers who made at least one purchase on Amazon.it during the year rose to well above 10 million (a 60% increase from 2016) as compared to a drop by over a fifth experienced by eBay.it over the same period.

FBA service from the sellers' perspective did not stem from the efficiency of the service itself but on its associated benefits (on Amazon marketplace). Indeed, a survey of Italian sellers found that the FBA service is costly (due to the fees and the reverse logistics), especially for SMEs, and does not provide incentive to develop multi-channel strategy (multi-homing), with two effects: new innovative logistics services for e-commerce could not achieve a minimum efficient scale and other marketplaces become less attractive for sellers compared to Amazon.it marketplace.

62. The Authority imposed behavioural measures on Amazon that will be subject to review by a monitoring trustee. In particular, Amazon shall:

- grant sales benefits and visibility on Amazon.it to all sellers which are able to comply with fair and non-discriminatory standards for the fulfilment of their orders, in line with the level of service that Amazon intends to guarantee to Prime consumers;
- define and publish such standards;
- apply the process of monitoring compliance with the standards required for the assignment of the Prime label uniformly to all offerings regardless of the logistics services adopted;
- apply the performance indicators uniformly to all offers on Amazon.it providing full information to sellers.

63. In November 2020, the European Commission opened an antitrust investigation into Amazon's business practices in the logistics and delivery services in the European Economic Area with the exception of Italy, since the AGCM was already investigating similar concerns with a particular focus on the Italian market²². Therefore, the AGCM has engaged in close cooperation with the European Commission throughout its own investigation in the Italian market.

64. Amazon appealed the AGCM infringement decision to Italy's Court of First Instance which, in March 2022, rejected Amazon's request to suspend the payment of the pecuniary sanction; at the same time, the Court postponed the implementation of the remedies with a view to coordinating with the European Commission's final decision on the parallel proceedings.

2.2. Mergers and acquisitions

2.2.1. Statistics

65. As regards mergers, the Authority reviewed 73 transactions, 62 of which were authorised in Phase I, five were dismissed with no grounds for action due to the inapplicability of the merger law and six required an in-depth investigation. In five cases after the in-depth review, the transaction was authorised subject to remedies, while in the remaining case, it was authorised unconditionally.

²² Amazon appealed to the General Court of the European Union against the Commission's decision to exclude the Italian market from its investigation. The General Court was asked to clarify whether the commission can open a separate probe while still preserving the competence of national enforcers to investigate the same case. However, the Court dismissed as inadmissible in its entirety Amazon's appeal on 14 October 2021. See ORDER OF THE GENERAL COURT in Case T-19/21, ECLI:EU:T:2021:730, available on the CURIA [website](#).

2.2.2. Summary of significant merger cases

*Merger case n. C12404 - ENEL X-VOLKSWAGEN FINANCE LUXEMBOURG/JVC*²³

66. In December 2021, the Authority authorized without conditions the creation of a joint venture (JV) between the Enel Group (the main electricity provider) and the Volkswagen Group, with the purpose of installing and managing, in the domestic market, three thousand ultra-fast public charging points ("High Power Charge" or "HPC") for recharging the batteries of electric cars ("Battery Electric Vehicle" or "BEV")²⁴.

67. The transaction involved a number of markets and in particular: a) the national market for the construction and management of public access HPCs for BEVs which is still in an early phase of development but with strong growth prospects in the short/medium term; b) the national markets for the supply of services for electric mobility and for the production and sale of BEVs in Italy. However, the JV would operate only in the first market.

68. Following an in-depth review, the Authority deemed the transaction would not create or strengthen a dominant position in the HPC market, given the existence of other significant investment projects by major industrial groups. Such projects are supported by funds allocated by the Government in the National Recovery and Resilience Plan in order to promote the transition to a more sustainable economy; moreover, sector regulation ensures that all HPC points have a non-discriminatory access to electricity distribution networks, thus neutralizing possible competitive advantages for vertically integrated operators in electricity distribution, as in the case of the JV through parent company Enel Group. Furthermore, the parties have provided assurance of their reciprocal commitments to operate in the Italian electric mobility market only through JV and only for the purpose of implementing the planned three thousand HPCs; finally, they are obliged to guarantee access to its infrastructure to any operator requesting it on non-discriminatory terms.

*C12373 - NEXI/SIA*²⁵

69. In October 2021, the Authority conditionally cleared a merger between SIA S.p.A. and Nexi S.p.A.. Nexi mainly operates in Italy in the payment services sector and, in particular, in the activities of merchant services & solutions, cards & digital payments and digital banking solutions. SIA operates worldwide in the design, implementation and management of infrastructures and technological services for financial institutions, central banks, private companies and public bodies, as well as in payment services sector.

70. The transaction involves numerous services in the field of digital payments, such as merchant acquiring, processing and card issuing, retail clearing of payments, transmission of interbank data, as well as services for the supply and maintenance of ATMs.

²³ See AGCM case no C12404 - ENEL X-VOLKSWAGEN FINANCE LUXEMBOURG/JVC, final decision no 29945, published on the AGCM Bulletin no 51/2021 and available on the [AGCM website](#).

²⁴ The transaction, due to its Community dimension, was initially notified to the European Commission, which then accepted the request for referral submitted by the Authority, pursuant to art. 9, paragraph 2, letter a), of EC Regulation no. 139/2004.

²⁵ See AGCM case no C12373 - NEXI/SIA, final decision no 29839, published on the AGCM Bulletin no 41/2021 and available on the [AGCM website](#).

The payment services sector is characterized by services that are often vertically integrated, have a technological component and are subject to rapid evolution, also prompted by the adoption of regulations at European level which have encouraged consolidation among operators as a way to boost efficiency.

71. While several markets affected by the transaction are often supranational and include important foreign competitors as alternative suppliers to the domestic clients of the post-merger entity, the Authority deemed that the transaction was suitable to create or strengthen the dominant position of the post-merger entity in the domestic markets for processing of cards of the Bancomat Circuit and clearing services for non-SEPA products (that is, products outside the Single Euro Payments Area).

72. Therefore, to alleviate such competition concerns, the Authority imposed behavioural and structural measures on Nexi and SIA, including: i) the obligation to set-up a clear, non-discriminatory and transparent offer for domestic processing and non-SEPA clearing services, and for acquiring processing and issuing processing of cards in the Bancomat Circuit; ii) the elimination of exclusivity clauses to facilitate the entry of a potential new operator; iii) the dismissal of the non-SEPA clearing contracts signed by Nexi.

73. In designing such remedies aimed at ensuring that potential new entrants would operate effectively and compete on a level-playing field, the Authority took in account the expected changes in the affected markets that might change the competitive dynamics in the medium term.

2.3. Estimation of expected benefits

74. In view of increasing transparency and accountability of its activities and measure its contribution to social welfare, in 2021 the Authority carried out an assessment of the expected benefits that consumers derive from its antitrust and merger decisions, following an OECD methodology²⁶. The following tables show the results of the analyses of the impact of AGCM enforcement activity from 2015 to 2020. The data refer to the investigations closed each year for restrictive agreements, abuses of dominant position and concentrations, even if launched in previous years.

75. Over the entire period under consideration (2015-2020), total consumer savings exceeded 5 billion euros. In the last three years, the annual savings for the national economy by the competition law enforcement amounted to an average of 1.1 billion euros, in an upward trend (see Table 3).

²⁶ See OECD, *Guide for helping competition authorities assess the expected impact of their activities*, April 2014, available at the following link: <https://www.oecd.org/competition/guide-impact-assessment-competition-activities.htm>

Table 3. Estimation of consumer savings from competition law enforcement: three-year moving averages (million €)

	2015-2017	2016-2018	2017-2019	2018-2020
Cartels and other anticompetitive agreements	436.1	378.9	702.4	550.1
Abuses	96.2	172.4	170.9	274.3
Mergers	58.3	38	95.2	292.6
Total	590.6	589.4	968.5	1,117

76. Over the entire period under consideration (2015-2020), more than half (57.8%) of consumer savings comes from the fight against cartels, followed by abuses (21.7%) and mergers (20.5%). In terms of trends, it is worth noting the increasing contribution of the merger review activity and the contrast to abuses of dominant position (see Table 4).

Table 4. Estimation of consumer savings from competition law enforcement: three-year moving averages (% breakdown)

	2015-2017	2016-2018	2017-2019	2018-2020
Cartels and other anticompetitive agreements	73.8%	64.3%	72.5%	49.3%
Abuses	16.3%	29.3%	17.6%	24.6%
Mergers	9.9%	6.5%	9.8%	26.2%

3. The role of the Competition Authority in the formulation and implementation of other policies

3.1. Opinions and recommendations

77. In 2021 the AGCM issued 95 opinions/recommendations. In particular, 61 non-binding recommendations and opinions concerned restrictions of competition arising from the existing legislation or draft legislation in numerous sectors and economic activities. Additional 34 opinions were sent to local authorities envisaging the possibility for AGCM to challenge their administrative acts before the Administrative Tribunal if they were not to comply with AGCM's recommendations. In some of these opinions, the Authority challenged the prorogation of state beach concessions by local authorities in breach of the Directive 2006/123/EC ("Services Directive") which requires competitive tender procedures for the awarding of state concessions.

78. The AGCM's regular monitoring of competition advocacy shows that 61% of opinions issued in 2019 and 2020 were successful, that is, taken into account by the recipient authority²⁷. Compared to the previous two-year period, 2018-2019, the overall compliance rate is growing overall (it was 55%). The sectors mostly interested by the

²⁷ The English version of the November 2021 report is available at the AGCM website: https://www.agcm.it/dotcmsdoc/monitoraggio-advocacy/Advocacy_2019_2020_aggiornamento_novembre_2021-EN.pdf

AGCM advocacy activity were the services sector, transport, tourism, energy, recreational, cultural and sports activities, and telecoms.

3.2. Description of significant advocacy interventions

3.2.1. *The AGCM advocacy report for the annual law on pro-competitive reforms*

79. A major achievement in 2021 has been the Authority's contribution to the Government multi-year economic reform to be implemented through the National Recovery and Resilience Plan, an EU-funded instrument to help post-pandemic economic recovery of EU member states. Since competition represents one of the pillars of the Plan, in February 2021 the Government solicited an input from the Authority which replied in March 2021, by issuing a comprehensive advocacy report aimed at enhancing the contribution that competition can offer to foster recovery and growth of the Italian economy in the medium and long term (see also section 1.3 above)²⁸. Many of the proposals put forward by the AGCM were already suggested on previous occasions.

80. The report is divided in seven parts.

81. The first part focuses on measures to encourage and speed up investments in strategic infrastructures, such as digital, port and energy infrastructures (see section 3.2.2 below). The second part calls for a reform of the public procurement sector, aimed at modernizing and simplifying the applicable rules and procedures, with a view to relaunching the economy and resuming investment. The third part proposes additional measures to complete the reform of local public services and restrict the use of the in-house providing only in cases where the alternative offered by the market does not constitute a more efficient solution. In the same vein, the Authority advocates for a strengthening of the legislative framework for the rationalization of publicly-owned enterprises which have been weakened by the introduction of derogations and exemptions.

82. The fourth part addresses measures aimed at removing obstacles to the entry of new operators and the development of dynamic competition, especially in concessions and the services sector, where productivity levels are particularly low. The fifth part formulates proposals for pro-competitive reforms that facilitate the achievement of desirable objectives in terms of environmental sustainability (see section 3.2.3 below). In the sixth part, the Authority suggests a strengthening of the health system and the protection of public health, in particular through the adoption of initiatives aimed at increasing the supply of health services and their efficiency, and better policies for the purchase of medicines through regulatory interventions. In the seventh part, the Authority has called for amendments to the competition law (see section 1.3 above).

83. Most of the sectoral reforms proposed by the AGCM are now included in the Plan and some of them are expected to be approved by the Parliament at the end of 2022.

84. The following sections describe the economic reforms advocated by the Authority with respect to the infrastructure sector and the transition to a more sustainable economy.

²⁸ See the AGCM opinion no. AS1730 "PROPOSTE DI RIFORMA CONCORRENZIALE AI FINI DELLA LEGGE ANNUALE PER IL MERCATO E LA CONCORRENZA ANNO 2021", published on the AGCM Bulletin no 13/2021, and available on the following link: <https://www.agcm.it/dotcmsdoc/allegati-news/S4143%20-%20LEGGE%20ANNUALE%20CONCORRENZA.pdf>

3.2.2. *Advocacy in the infrastructure sector*

85. An important section of the advocacy report is devoted to infrastructure development given the role it can play in promoting economic growth and competitiveness. The AGCM focused on three areas: digital networks, ports infrastructure and energy infrastructure.

86. As for **digital networks**, the Authority's proposals address the theme of investment in fixed and mobile communication networks, noting that incentives for investments in "future-proof" technologies can be based on three main drivers: i) ensuring infrastructure competition; ii) reducing administrative and authorization burdens; and iii) stimulating consumer demand and mobility.

87. In relation to infrastructure competition, the Authority called for the set-up of a regulatory framework for the development of ultra-broadband connectivity services delivered as a result of competition among different fixed and mobile infrastructures and connection technologies, also through forms of co-investments and without the imposition of a particular standard.

88. With respect to reducing administrative and authorization burdens, the Authority advocated for a simplification of procedures for obtaining permits to carry out excavation work for high-capacity networks and to install 5G equipment. In this regard, the Authority suggested: the introduction of a fast track mechanism for the resolution of administrative disputes concerning unjustified refusals by local authorities; ii) the provision of substitutive powers at the central level in case of inertia from local authorities and iii) a reconciliation mechanism, entrusted to already existing bodies such as the communications regulator, for disputes between private parties in relation to the roll out of the infrastructure.

89. The AGCM also included suggestions in relation to consumer mobility and demand as a driver for the adoption of new technologies in the fixed network sector. In particular, the Authority suggested: i) the removal of all forms of contractual lock-in when providing essential equipment to users; ii) the definition of standard processes for number portability between different networks and technologies, as well as a system of public support to demand (voucher) that is simple to implement, transparent in terms of timing and adoption rules, and rewards only investments in future-proof networks.

90. In the Authority's view, the development of **ports infrastructures** is a fundamental requirement in order to benefit from the rapid growth of global trade of recent years. To this end, the AGCM's interventions in port concessions are aimed at removing obstacles to investment and efficiency so to make Italy's port/logistics system more competitive vis-à-vis those of the other Mediterranean countries. To relaunch it, the Authority recommended an overhaul reform of the entire ports legislation (which dates back to 1994) in order to account for sector developments such as increasing naval concentration, integration of the supply chains and growing geographic competition of ports along the main traffic routes. Certain outdated restrictions on port activities - such as, the prohibition for holding more than one concession in the same port – are to be removed together with more recent restrictions, such as the prohibition on shipowners to self-supply port operations and services, thus putting them in disadvantage in utilizing Italian ports compared to neighbouring ports. Furthermore, the Authority advocated for the introduction of competitive procedures for assigning port concessions so to favour the entry of the most efficient operators.

91. As for **energy infrastructures**, the Authority's proposals invite for the rapid transposition of Directive (EU) 2019/944 on common rules for the EU electricity market and the approval and implementation of the Grid Development Plan prepared by Terna, the Transmission System Operator, with a view of reducing grid congestion which can result

in high market power of some generation plants. The Authority called for the development of innovative ways of providing grid management and control services.

3.2.3. *Advocacy to promote a sustainable economy*

92. In the fifth part of the AGCM advocacy report for the purpose of the annual law on procompetitive reforms, there are proposals to promote a regulatory framework in which competition and regulation can work together in promoting a more sustainable economy. The Authority focuses on infrastructural bottlenecks for the development of a sustainable economy with respect to three areas: infrastructure for recharging electric cars; development of the recycling sector (for the separated waste) and the development of combined power-heat plants (for the undifferentiated waste).

93. The development of **infrastructures for recharging electric vehicles** is an important prerequisite for enabling the growth of electric mobility, with more general repercussions in terms of growth and sustainability. Large-scale deployment of new electric vehicles requires adequate public charging infrastructures in urban and suburban areas with sufficient deployment characteristics and widespread interoperability. The Authority's proposals focus on the conditions necessary to ensure that, in the development phase of the sector, no distortions are created by the regulatory framework that could compromise its efficient functioning in the future. Such proposals are also based on the recent enforcement experience²⁹.

94. With respect to recent regulatory provisions (Article 57 of Legislative Decree no. 76 of 16 July 2020, the so-called "Simplification Decree"), aimed in particular at simplifying procedures and providing incentives for the construction of charging infrastructures for electric cars, the AGCM called for (i) the removal of the regulated tariff scheme introduced for the remuneration of the cost of electricity and for (ii) the set-up of transparent and non-discriminatory procedures for the allocation of public spaces for the installation of recharging stations, to avoid concentration at local level as well as the application of adequate competitive procedures by all public concessionaires (e.g., motorway concessionaires).

95. In the **recycling sector**, the Authority proposed far-reaching changes in order to ensure that through a more competitive process this sector can play an essential role in the production of more environmentally friendly materials, making an important contribution to environmental objectives. Regulatory amendments are proposed to: i) eliminate unjustified discrimination between public and private operators in the management of urban waste; ii) encourage the development of numerous autonomous systems for recovery and recycling; iii) promote the aggregation of firms in order to ensure the efficiency of collection activities; iv) promote competitive tender procedures for the award of the service contracts (limiting the recourse to in-house providing to demonstrated cases of greater economic convenience); v) accelerate the implementation of end-of-waste criteria³⁰ to allow the emergence of new markets and support a real circularity of production processes; vi) promote the development of plants in geographical areas that do not have them, for a more balanced distribution throughout the country and to minimise the environmental impact of transport.

²⁹ See abuse case no. A529 described in section 2.1.3 and merger case no. C12404 described in section 2.2.2.

³⁰ End-of-waste criteria specify when certain waste ceases to be waste and obtains a status of a product (or a secondary raw material).

96. Finally, with respect to the management of undifferentiated waste, the AGCM recognised that the promotion of competition cannot occur without the development of waste-to-energy plants equipped with the latest waste treatment technologies for greater efficiency and better environmental performance. To this end, the Authority proposed a further simplification of authorization procedures for the construction of plants, also envisaging a mechanism substitutive powers (by the central government) in the event of inertia on the part of the local public administrations involved, and the provision of incentives for the populations concerned.

4. Resources of the Competition Authority

4.1. Annual Budget

97. The annual expenses incurred by the Authority in 2021 totalled EUR 60.7 million (EUR 61.4 million in 2020)³¹. This figure also includes the costs for other competences assigned to the Authority such as consumer protection, conflicts of interest and legality rating.

4.2. Personnel

98. The total number staff of the AGCM at the end of 2021 was 273. This includes all human resources tasked with performing other non-competition competences for the AGCM (e.g. consumer protection). In December 2021, 137 employees worked in competition area, 38 of whom were support staff and 99 non-administrative staff. The latter group comprised 46 lawyers, 42 economists and 11 other professionals (e.g. IT experts, one data scientist).

³¹ In accordance with Italian Legislative Decree no. 1/2012, the financing system of the Authority is based on a mandatory contribution from companies established in Italy whose turnover exceeds the threshold of € 50 million. The contribution, which was originally set as 0.06 per thousand, was gradually reduced by the AGCM to the current level of 0.055 per thousand, set in January 2018 and confirmed in February 2021. The income derived from these contributions replaces all previous forms of financing (merger fees and funds from the public budget).