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Annual Report on Competition Policy Developments in Italy

-- 2022 --

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Italy

Executive Summary

1. This report covers the enforcement and advocacy activities performed in the past calendar year (1 January 2022 to 31 December 2022) 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 2023.
2. In 2022, the AGCM continued to prioritize **anti-cartel enforcement**. It uncovered and sanctioned four cartels, three of which in the form of bid-rigging. Remarkably, in one of the cartel cases, concerning water meter supply, for the first time the investigation was launched following an anonymous complaint. To further enhance its detection capabilities, the Authority has recently introduced a **whistleblowing system** and created a specialised Cartel Division.
3. The AGCM also closed five investigations assessing **non-cartel anticompetitive agreements**, accepting commitments in three cases and finding an infringement in one case (while in the remaining case the agreement was withdrawn). These agreements concerned strategic sectors of the Italian economy, such as ultra-broadband services, car insurance and bank payments. In one instance, the Authority accepted commitments to amend a co-investment agreement related to the roll out of the new generation broadband networks under the National Recovery and Resiliency Plan (NRRP). In another case, it ascertained that the agreement establishing the remuneration model for cash withdrawals from ATMs, proposed by Bancomat (an Italian circuit), did not meet the evidentiary standards for the exemption under Art. 101(3) TFEU.
4. In the **unilateral conduct field**, the AGCM closed six investigations, issuing an infringement decision in three cases and accepting commitments in the other cases. The Authority has been at the forefront of challenging excessive pricing in the European pharmaceutical sector since the 2016 Aspen case: in 2022 the Authority fined Leadiant group for overcharging the National Health Service for an orphan drug. This case was conducted in close cooperation with other European agencies investigating a similar conduct. The other two infringement decisions concern the local transport sector for passengers. Two of three commitment decisions concerned the waste management sector, consistently with the AGCM’s priority concern for the promotion of the circular economy and environmental objectives.
5. Regarding the **digital sector**, in July 2022 the Authority launched an investigation against Google’s refusal to grant interoperability to Hoda’s innovative application, Weople. This app allows users to monetize their data through the exercise of the data portability right under Article 20 of the GDPR. The case is ongoing.
6. The Authority continues to enforce its powers against **abuse of economic dependence** to tackle abuses perpetrated by undertakings that enjoy significant strength vis-à-vis their counterparties, with potential effects on competition. By accepting commitments, the Authority improved the business conditions imposed on franchise distribution networks by firms like McDonalds. Prompted by the Authority, the relevant legislation has been recently adjusted to the digital era, with the introduction of a rebuttable presumption of economic dependence from digital platforms that represent key gateways for reaching end-users or suppliers.

7. On the **merger** side, the AGCM carried out four Phase II reviews, issuing a prohibition decision and closing the remaining three cases with the imposition of remedies. In particular, the Authority blocked a merger that would have strengthened concentration in the electricity generation sector in the macro-area of Sicily. The Authority refined its economic approach in the analysis of competitive effects of retail markets, by employing advanced economic indicators of competitive pressures. Moreover, the Authority requested and obtained an important legislative reform in 2022, which allows it to call-in below-thresholds transactions, under certain circumstances and aligns its substantive rules to the EU standards (including the replacement of the dominance test with the SIEC test).

8. The AGCM also endeavours to promote competition principles in the Italian legal system and culture. A major achievement has been the Authority's contribution to the Government's multi-year economic reform in the framework of the National Recovery and Resilience Plan, an EU-funded instrument aimed to help post-pandemic economic recovery of EU Member States. Every year, the AGCM addresses a comprehensive advocacy opinion to the Government and Parliament, which outlines a series of possible measures suitable to enhance competition in crucial sectors. In 2022, the Italian Parliament approved Law no. 118/2022, the contents of which largely reflect the proposals and suggestions submitted by the Authority in its special opinion the year before. Moreover, in 2022 the AGCM issued 62 opinions on numerous sectors and delivered detailed recommendations to make electricity and gas markets more competitive. In the aftermath of the war in Ukraine, it swiftly reacted to the surge in retail fuel prices by performing a monitoring activity that deterred potential anticompetitive practices, while using its consumer protection powers to ensure clear and transparent information on the demand side. More recently, the Authority has launched a sector inquiry to analyse competition concerns in the extraction and refining stages of the energy supply chain and fuel price dynamics in the retail distribution.

9. Finally, in order to increase **transparency and accountability of its activities** and measure its contribution to social welfare, in 2022 the Authority continued to carry 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 (2015-2022), total consumer savings exceeded 8 billion euros. Over the last three years, the annual savings for the national economy stemming from competition law enforcement amounted to an average of 1.3 billion euros.

1. Regulatory and Policy Developments

10. After the transposition of Directive (EU) 2019/1 (the ECN+ Directive)¹ in 2021, the Italian competition law framework has been further amended in 2022 by Law no.

¹ Italian Legislative Decree No. 185/2021, 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. For more information, see the AGCM 2021 annual report.

118/2022, implementing the proposals put forward by the Authority in its 2021 advocacy report for the purpose of the annual law for pro-competitive reforms².

11. Moreover, Law no. 118/2022 contains provisions that further expanded the powers of the Authority, amending the Competition Act (Law No. 287/90) and inserted new provisions on transaction procedure. It has, moreover, strengthened the measures to fight abuse of economic dependence set forth in Law No. 192/1998. The changes are described in greater detail below.

1.1. Changes to the merger control system

12. Law No. 118/2022 introduced major changes in merger review.

13. Article 32 of Law n. 118/2022 amended Article 16 of the Competition Act by introducing, in a new paragraph (1-bis), a **regime for reviewing transactions falling below the applicable thresholds** in order to capture acquisitions of nascent competitors.

14. The Authority may call-in a concentration by requesting its notification within 30 days when:

- i) there are *prima facie* concrete risks for competition in the Italian market (or on a relevant part of it), also considering the detrimental effects for the development and diffusion of small enterprises characterized by innovative strategies³;
- ii) the transaction occurred at most 6 months before the notification order;
- iii) the transaction meets one of the two applicable and cumulative filing thresholds⁴ or the worldwide overall turnover of the undertakings concerned is higher than EUR 5 billion.

15. Failure to notify within the above-mentioned deadline leads to the application of administrative pecuniary sanctions pursuant to Article 19 of Competition Act (i.e., fines up to 1% of the relevant turnover of the undertakings concerned referring to the last consolidated financial statement).

16. This new provision also states that the Authority shall define a guidance for the application of this new regime, in accordance with the EU principles. Accordingly, on 2 January 2023, the AGCM adopted a notice on the notification of below-threshold merger transactions⁵. The notice addresses the procedural aspects of the new regime, clarifies the meaning of “concrete risks for competition in the market” (see point i) above) and allows for voluntary notifications.

17. In assessing the “concrete risks for competition”, the AGCM will consider elements ranging from the market structure and the characteristics of the operators involved, to the thresholds realised in Italy. When no turnover figures are available or turnover is not indicative of the competitive constraint that an undertaking exercises or may exercise in

² See section 3.2.1.

³ The reference to small enterprises has been added by the Parliament (not proposed by the AGCM).

⁴ That is, according to the latest update of March 2023, EUR 532 million for the combined turnover in Italy of all the undertakings concerned and EUR 32 million for the individual turnover in Italy of each of at least two of the undertakings concerned by the transaction.

⁵ See “[Comunicazione relativa all'applicazione dell'articolo 16, comma 1-bis, della legge 10 ottobre 1990, n. 287](#)”. The notice was adopted following a public consultation process launched in October 2022.

the future, the Authority may take into account additional elements such as, for example, whether a firm:

1. is a start-up or new entrant with significant competitive potential that has yet to develop or adopt a business model that generates significant revenues (or is still in the early stages of implementing such a model);
 2. is an important innovator or is conducting potentially important research;
 3. constitutes a significant current or potential competitive force;
 4. has access to competitively significant assets (such as raw materials, infrastructure, data or intellectual property rights); and/or
 5. provides products or services that are key inputs/components for other industries.
18. The Authority may also consider in its assessment whether the value of the transaction is particularly high compared to the acquired firm's current turnover.
19. In the event that none of the undertakings involved in the concentration develops turnover in Italy, the Authority will assess whether, in the light of the specific characteristics of the transaction and of the undertakings concerned, the concentration appears in any event likely to affect competition in the national market, or in a substantial part of it, considering, for example:
- a. the diffusion in Italy of the activities concerned among the users/consumers of the services of the undertakings involved, even if the services are provided at zero prices: in the digital sector, for example, indicators of activity could be the daily or monthly number of users residing in Italy of such digital services or the number of accesses of individual users residing in Italy to a given website;
 - b. the location in the national territory of the company's headquarters, production facilities and/or research or experimentation laboratories;
 - c. the performance of R&D activities potentially relevant to the national market: for example, relevant factors for the assessment may be the circumstance that the outcome of the R&D activity is marketable in the national territory, or that the undertakings already own a particular patent (or have started the approval process) for a drug that can be distributed in the national territory;
 - d. the existence of a plan to enter the national market: account will be taken, for example, of plans for opening production facilities, evidence of occurred or imminent recruitment of staff, the existence of a processes for obtaining marketing authorisations or of an expectation to conclude sales contracts in Italy.
20. Additionally, merging parties are allowed to voluntarily notify the AGCM even before the finalisation of the transaction if they have doubts as to whether the concentration at stake may meet the requirements under paragraph 1-bis of Art. 16 of the Competition Act. In the event of a voluntary notification, the Authority, based on the information received from the merging parties, will clarify whether it intends to request the formal notification of the transaction within 60 days from the receipt of the voluntary notification.
21. Other important changes introduced by Law no. 118/52022 concern the **substantive assessment of mergers** and align the national framework to the EU Merger Regulation (EUMR). First, the dominance test has been replaced by the so-called SIEC test (“significant impediment to effective competition”), as set out in the EUMR. Second, all full-function joint ventures will be subject to merger control rules, regardless of their

‘concentrative’ and ‘cooperative’ nature⁶. Third, efficiency gains as a factor to consider that might offset the anti-competitive effects of a merger is now explicitly mentioned in the Competition Act.

22. Finally, the **calculation of the turnover of credit and other financial institutions** for merger control purposes have been aligned to the ones set out in the EUMR.

1.2. Changes to the AGCM investigative powers

23. On the procedural side, Law no. 118/2022 further strengthens the Authority’s **investigative toolkit** by extending its power to apply the monetary sanctions envisaged for formal investigations in case of failure to cooperate with the AGCM also to requests for information or documents sent outside formal proceedings⁷. Under the previous regime, the Authority could only rely on the voluntary cooperation of interested parties whenever requesting information outside formal proceedings. The extension applies to requests for information or documents for the purposes of the application of the national and EU rules on anticompetitive agreements and abuses of dominant position, as well as the control of concentrations. Such requests for information must be proportionate and not oblige the addressees to admit an infringement of Articles 101 or 102 TFEU or national equivalents; moreover, the Authority must provide the addressee with a reasonable period of time to reply, also having regard to the complexity of the information requested (in any case, this period shall not exceed sixty days, renewable upon motivated request).

24. Law no. 118/2022 also provides for a **settlement procedure** under the new article 14-*quarter* of the Competition Act, which can be used in the application of EU and national rules concerning anticompetitive agreements and abuses of dominant position.

25. After the opening of a formal investigation, the Authority may set a deadline within which the undertakings under scrutiny may express their willingness to participate in discussions in order to settle with the AGCM. The Authority may inform these interested parties about:

- the allegations it intends to raise against them and the evidence used to support the allegations;
- a non-confidential version of any accessible document within the case-file, in order to enable the investigated party to ascertain its position regarding a particular period of time or any other particular aspect of the alleged infringement;
- the range of the fine potentially being imposed.

26. Such information shall not be disclosed to third parties, unless the AGCM has explicitly authorized its disclosure.

⁶ Prior to the change, the national rules reflected the original approach of the former Regulation No. 4064/1989/EU, pursuant to which joint-ventures (JVs), even full-function ones, if they were ‘cooperative’ in nature (i.e., when both parents remained actual or potential competitors in the same geographical and product market as the JV, or in a market upstream, downstream or neighbouring with respect to that of the JV) were appraised under the (substantive and procedural) rules on restrictive agreements.

⁷ Monetary sanctions for failure to provide information, for delay, omission or inaccuracy in providing information, have been increased with Legislative Decree No. 185/2021 (implementing Directive (EU) 2019/1). These sanctions may reach now 1% of the turnover of the undertaking concerned. The Legislative Decree also introduced penalty payments.

27. In the event of a successful outcome of such discussions, the Authority may set a deadline within which the undertakings concerned may commit to enter into the settlement procedure by submitting settlement proposals. The Authority may decide at any time to discontinue settlement discussions altogether, with regard to one or more specific parties, if it considers that the effectiveness of the procedure is otherwise undermined. The Authority is not obliged to consider settlement proposals received after the expiry of the deadline.

28. Law no. 118/2022 entrusts the AGCM with the task of defining, in accordance with the EU framework, the procedural rules and the extent of the fine reduction in the event of successful conclusion of the settlement procedure. To this end, in February 2023 the Authority launched a public consultation on a draft guidance text⁸, with a view to issuing the final version by the first half of 2023.

29. Finally, in February 2023 the Authority, building on best practices of the European Commission and national competition authorities, launched its own [Whistleblowing platform](#), through which anyone in possession of information on competition infringements can interact with the AGCM investigation offices, whilst remaining anonymous. With this tool, the Authority aims to increase its detection ability vis-à-vis secret cartels, which are increasingly difficult to unveil.

1.3. Changes to the legislation on abuse of economic dependence

30. Law no.118/2022 amended the provisions related to abuse of economic dependence, also to factor in the digital environment.

31. Under Article 9 of Italian Law n. 192/1998⁹, economic dependence exists where a company can impose an “*excessive imbalance of rights and obligations*” in its commercial relationship with another company, taking into account “*the effective possibility for the party suffering the abuse to find satisfactory alternatives on the market*”. While the enforcement of Art. 9 provisions is entrusted to civil courts, which can grant interim measures and damages, in 2001 the legislator considered it important to reinvigorate its enforcement by allowing the AGCM to apply the power to apply Art. 9 provisions to situations “*in which the Authority itself finds that an abuse of economic dependence has relevance to the protection of competition and the market*” (Art. 9, para 3-bis, of Law 192/1998).

32. Since then, the Authority has enforced this legislation only those limited cases where the abuse of economic dependence is capable of excluding a competitor from the market, whether through arbitrary termination of contractual relations or the imposition of unfair contractual terms¹⁰.

⁸ See the draft guidance text “[Comunicazione relativa all’applicazione dell’articolo 14-quater della legge 10 ottobre 1990, n. 287](#)”.

⁹ Law no. 192/1998 provides for a discipline for subcontracting, e.g., when a contractor undertakes to carry out work on behalf of a client enterprise on semi-finished products or raw materials supplied by the same commissioning enterprise.

¹⁰ In applying Art. 9 provision, the Authority has focused its attention on those cases of abuse that can have an impact beyond the individual contractual relationship in which it occurs, either due to the size of the abusive conduct (e.g., by looking at its geographical or temporal scope and/or the number of “weak” enterprises involved, as well as how long the abusive practice has been perpetuated) or its adverse effects which, although limited to a single contractual relationship, may have a “signalling” effect for the entire market.

33. The amended rules on abuse of economic dependence consider the intermediation power of digital platforms. They introduce a **rebuttable presumption of economic dependence** for those operators dealing with digital platforms offering intermediation services when the latter represents a key gateway in reaching end users and/or suppliers¹¹.

34. Furthermore, the amendments include a list of non-exhaustive abusive conducts such as:

- providing insufficient information or data regarding the scope or quality of the service provided
- demanding undue unilateral benefits not justified by the nature or content of the activity performed,
- adopting practices that inhibit or hinder the use of different providers for the same service, including through the application of unilateral conditions or additional costs not provided for in existing contractual agreements or licenses.

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

35. During 2022, 27 formal proceedings were concluded: 10 concerned restrictive agreements, 6 abuses of dominant position, 4 mergers requiring an in-depth assessment and 7 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 in 2022

	2022
Anti-competitive agreements (incl. cartels)	10
Abuses of dominant position	6
Merger transactions examined (in phase two)	4
Non-compliance with cease and desist order or merger notification obligations	6
Redetermination of sanctions	1
TOTAL	27

¹¹ Law n.118/2022 mandates the Presidency of the Council of Ministers, in agreement with the Ministry of Justice and having consulted the Authority, to adopt guidelines aimed at facilitating the application of the new provisions, in line with the principles of European legislation. As of April 2023, such guidelines have not been adopted.

Table 2. Proceedings concluded in 2022, 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)	2	8	-	10
Abuse of dominant position	-	6	-	6
	Clearance	Prohibition, authorisation subject to remedies	No jurisdiction or inapplicability of the law, revision of remedies	Total
Concentrations of independent undertakings	90	4	4	98

36. In 2022, the Council of State (the Supreme Administrative Court) fully upheld on the merits 4 out of 9 Authority's decisions while the TAR Lazio (Administrative Court of First Instance) confirmed 5 of 7 decisions on the merits. In some cases, the AGCM decisions have been annulled by national review courts on procedural grounds, in particular for allegedly excessive duration of the pre-investigative phase.

Anti-competitive agreements including cartels

37. In 2022, the AGCM closed five cartel investigations, finding infringement and imposing fines in four cases, three of which concerning bid-rigging offences. In case no. 1835, the AGCM fined the five major water meter suppliers over €10 million after finding they colluded to rig bids for nearly nine years: this is the first ex-officio investigation launched on the basis of a document of particular evidentiary significance, received from an anonymous source. The other two bid-rigging cases affected important services for the public administration (maintenance of road network pavements and professional clothing for employees of certain public bodies).

38. As for non-cartel conduct, the AGCM closed five investigations accepting commitments in 3 cases and finding an infringement in one case (while in the remaining case the agreement was withdrawn). These agreements concerned key sectors such as ultra-broadband services, car insurance and payments. For more information on some of the above cases see section 2.1.2 below.

39. During 2022, the AGCM launched four additional proceedings for suspected breaches of article 101 TFEU, two of which concerning bid-rigging allegations in the provision of board and lodging services for penal institutions and in the provision of radiopharmaceuticals for health authorities¹².

¹² See AGCM case n. [1862 - AFFIDAMENTO DEI SERVIZI DI VITTO E SOPRAVVITTO DEGLI ISTITUTI PENITENZIARI](#), opening decision no. 30366, published on the AGCM Bulletin no 42/2022; AGCM case n. [1859 - GARE DI ACQUISTO E FORNITURE DI RADIOFARMACI](#), opening decision no. 30088, published on the AGCM Bulletin no 20/2022.

Abuse of dominant position

40. In 2022, the AGCM closed six investigations, issuing an infringement decision in three cases and accepting commitments in the other cases. One infringement decision¹³ concerns the pharma sector: the Leadiant pharmaceutical group was found to have charged to the Italian NHS unfair prices for an orphan drug, named CDCA Leadiant, the only available treatment for a rare disease, Cerebrotendineous Xanthomatosis (CTX), which causes severe disability and leads to early death.

41. The other two infringement decisions concern the local transport sector. In one case¹⁴, the AGCM intervened to terminate a dilatory strategy put in place by the incumbents in order to delay the entry of the company awarded with the provision of public transportation services. In the other case, the AGCM sanctioned the dominant ferry company for charging excessive prices on a ferry transportation route between Sicily and the Calabria region¹⁵.

42. With respect to the commitment decisions, two of them concern waste management and recycle. The AGCM's intervention aimed at fostering competition as a way to promote circular economy as set out in the sectoral legislation¹⁶. The third commitment decision regards the digital payments sector and prompted a change in a procedure put in place by Mastercard, which was capable of preventing the enrolment of the cards of other circuits on smartphones' digital wallets¹⁷.

43. In 2022 the AGCM launched four new investigations into abuse of dominant position. In particular, in July 2022, the Authority opened an investigation against Google for allegedly abusing its dominant position, by refusing to grant Hoda interoperability on its platform¹⁸. Hoda has developed Weople, an innovative App through which users authorise Hoda to collect, process and sell personal data on their behalf for advertising targeting purposes, pursuant to Article 20 of the European Data Protection Regulation. To address the Authority's concerns that Google's conduct might prevent new and unexplored ways for consumers to reap economic value from their data, Google submitted commitments, which have been put under market test in March 2023¹⁹.

Other legislations: abuse of economic dependence

44. The AGCM is competent to apply the abuse of economic dependence legislation (Art. 9, para 3-bis, of Law 192/1998) when an abuse is relevant for the protection of competition in the market (see also section 1.3 above). In 2022, the Authority closed three

¹³ See case No. A524 in section 2.1.3 below.

¹⁴ See case No. A536 in section 2.1.3 below.

¹⁵ See AGCM case no. [A541 - SERVIZI TRAGHETTAMENTO VEICOLI STRETTO DI MESSINA](#), infringement decision no. 30086, published on the AGCM Bulletin no 14/2022.

¹⁶ See AGCM cases no. [A544 - ERION WEEE/CONDOTTE ANTICONCORRENZIALI](#), commitment decision no. 30130 published on the AGCM Bulletin no 18/2022 and [A545 - CONSORZIO POLIECO/CONDOTTE ANTICONCORRENZIALI](#), commitment decision no. 30300 published on the AGCM Bulletin no 35/2022.

¹⁷ See case No. A548 in section 2.1.3 below.

¹⁸ See AGCM case n. [A552 - GOOGLE-OBSTACLES TO DATA PORTABILITY](#), opening decision no. 30215, published on the AGCM Bulletin no 27/2022.

¹⁹ See AGCM case n. [A552 - GOOGLE-OBSTACLES TO DATA PORTABILITY](#), market test commitment decision no. 30508, published on the AGCM Bulletin no 12/2023.

investigations with commitments aimed at restoring balance in the contractual relationships between the franchise operators and their franchisees in the clothing sector²⁰, fast food industry²¹ and telecom retail sector²².

45. In case A546, the AGCM was concerned about a number of clauses and conditions applied by McDonalds to its franchisees, as well as some conducts adopted in the pre-contractual phase, which appeared to considerably limit the negotiating power and choice options of prospective franchisees. With the commitments, the entire framework of the pre-contractual phase has been significantly modified, so as to ensure full awareness by the would-be franchisees of the contents of the agreement they are going to sign, as well as the obligations, commitments and profitability related to operating a Mc Donald's restaurant, while reducing the costs for training activities.

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

Case I835 – Bid-rigging cartel in the supply of water meters²³

46. In February 2022, the Authority imposed a sanction of about €10 million on G2 Misuratori S.r.l., Maddalena S.p.a., Itron Italia S.p.a., Sensus Italia S.r.l. and WaterTech S.p.a., providers of water meters. The bid-rigging cartel affected a set of public tenders launched between December 2011 and September 2019 for the provision of meters of cold water for domestic or industrial use for the statutory measurement of consumption.

47. The collusive strategy was based on a sophisticated allocation mechanism whereby the companies first identified the party to be awarded the contract, and then established which behaviour the other companies would have to adopt in order to reach the agreed outcome in terms of maximum applicable discounts, minimum unit prices or non-participation (predetermining, in the last case, also the motivation to be presented to the tender station). More than the 90% of the bids of the period concerned were awarded to the undertakings involved in the cartel.

48. This is the first ex-officio investigation launched on the basis of a document, received from an anonymous source, which provided an important contribution to the evidence gathering activity. In particular, the AGCM was able to collect emails, fax, Whatsapp chats, Skype chats and evidence of secret meetings, which showed how the parties colluded to breach bid-rigging rules. The Authority concluded that the agreement had significantly negative effects on competition and infringed Article 101(1)(c) TFEU.

²⁰ See AGCM case no. [A550 - CATENA DI FRANCHISING ORIGINAL MARINES](#), commitment decision no. 30221 published on the AGCM Bulletin no 28/2022.

²¹ See AGCM case no. [A546 - FRANCHISING DI MCDONALD'S](#), commitment decision no. 30199 published on the AGCM Bulletin no 25/2022.

²² See AGCM case no. [A547 - CONDOTTE DI WIND TRE A DANNO DEI RIVENDITORI](#), commitment decision no. 30276 published on the AGCM Bulletin no 32/2022.

²³ See AGCM case no [I835 - MERCATO DEI CONTATORI D'ACQUA](#), infringement decision no 29981, published on the AGCM Bulletin no. 6/2022.

*Case no. I850 – Co-investment agreement related to the roll out of the new generation broadband networks*²⁴

49. In February 2022, the AGCM accepted and made binding the commitments presented by Telecom Italia S.p.A. (hereby, TIM), Fastweb S.p.A., Teemo Bidco S.a.r.l. (owned by the investment fund KKR), FiberCop S.p.A. and Tiscali Italia S.p.A, with respect to a project aimed at the roll-out of new generation broadband networks, through the set-up of the joint venture FiberCop. The FiberCop joint venture is a fibre optic network scheme that is 58% owned by TIM, 37.5% by KKR and 4.5% by Fastweb, with Tiscali as a strategic partner. FiberCop intends to aggregate potential investors who intend to build ultra-broadband networks while also offering its resources to all operators on reasonable and non-discriminatory terms.

50. In the AGCM's view, the co-investment project would have resulted in a reduction of the contestability of demand for wholesale access services to fixed broadband and ultrabroadband. Moreover, the structure of the co-investment project could have reduced other licensed operators' incentives to invest in new infrastructures (making more convenient to rely only on active services provided by TIM) and increased the degree of infrastructural dependence from TIM, affecting the ability of TIM's competitors to offer both wholesale and retail broadband access services.

51. To avoid potential anticompetitive effects on the wholesale and retail markets for ultra-broadband services, the commitments accepted by the Authority aim at increasing contestability and promoting infrastructural competition. In particular, the commitments are based on two pillars: on the one hand, they reduce the burden imposed on customers in the wholesale fixed telecommunications market, thus enabling them to potentially join competing broadband network projects and hence fostering full infrastructural competition (e.g., they lower the minimum requirements for potential co-investors in terms of turnover and geographical coverage the latter must commit to in order to join the project); on the other hand, they aim at enhancing the development of fibre infrastructure in light of Italy's strategic objective to make high-speed broadband connections available in the entire country by 2026, by imposing on TIM a clear timetable for the implementation of the project.

*Case No. I849 – Proposed remuneration model for withdrawals from ATMs by Bancomat consortium*²⁵

52. In November 2022, the Authority ascertained that Bancomat consortium's envisaged project of modifying the remuneration model for withdrawals from ATMs that do not belong to cardholder's bank network (so called "not on us withdrawal"), constituted an agreement restricting competition pursuant to Art. 101(1) of the TFEU. The project was brought to the attention of the AGCM by Bancomat itself.

53. The project involved the replacement of the current scheme, under which the issuer bank (that is, the bank of the card used for the withdrawal) pays an interchange fee (MIF) to the acquirer bank (that is, the bank owning the ATM at which the withdrawal takes place) and may in turn charge its customer a fee, with a new model under which it would be directly the acquirer bank to request a fee from the cardholder (*Direct Access Fee*).

²⁴ See AGCM case no. [I850 - ACCORDO FIBERCOPI](#), commitment decision no 30002, published on the AGCM Bulletin no. 7/2022.

²⁵ See the AGCM case no. [I849 - BANCOMAT/PRELIEVI CONTANTI](#), infringement decision no 30381, published on the AGCM Bulletin no. 43/2022.

54. The AGCM considered that the project would raise three main competition concerns. First, the project could lead to the significant increase of average ATM withdrawal fees for users by the participating banks. Second, it could reduce competition between banks in the provision of services to customers, as these banks would no longer have the possibility of influencing a competitive variable (i.e. the possibility of determining the withdrawal fee and the possibility of not charging it to the customer). Third, it could increase the incentives to collude for the participating banks.

55. In addition, Bancomat failed to provide evidence of the existence of each of the four conditions laid down in Article 101(3) TFEU, which could have led to an exemption. In conclusion, the Authority ascertained that the agreement underlying the remuneration model would constitute a violation of art. 101 TFEU. However, it considered that there were no grounds for the imposition of a sanction, since the project had not been implemented by Bancomat.

2.1.3. Description of significant cases regarding abuse of dominant position

Case n. A524 Exploitative abuse by Ladiant Group in the pharma sector²⁶

56. In May 2022, the AGCM sanctioned over 3.5 million euros Essetifin S.p.A. and Ladiant Biosciences Ltd (both part of the Ladiant group), for violation of Article 102 TFEU.

57. The relevant market is the manufacture and sale of drugs based on chenodeoxycholic acid (CDCA), utilized for the treatment of a rare disease, the cerebrotendinous xanthomatosis (CTX), which causes several disabilities and early death. The Authority ascertained that Ladiant holds a dominant position, specifically of monopoly, insofar as its drug, Chenodesoxycholic Acid Ladiant, is the only CDCA-based product for the treatment of the mentioned disease, available on the Italian market.

58. The Authority found that since June 2017 the Ladiant group had abused its market position through a negotiating strategy with AIFA (the Italian regulator of the pharmaceutical sector) which had led to charge unjustifiably excessive prices to the Italian National Health System. In particular, the undertaking adopted a dilatory and obstructive behaviour that unnecessarily extended the negotiations with AIFA, intentionally exploiting AIFA's weak bargaining position, given its duty to continue to provide patients with an essential, irreplaceable and life-saving drug. The evidence gathered during the investigation showed that the conduct was the outcome of a complex strategy, intentionally implemented by the dominant company for several years, with the aim of creating the appropriate environment for its abusive pricing policy.

59. In setting the amount of the fine, the Authority considered it important to coordinate with the other competition authorities investigating the same matter in order to ensure that all fines imposed are proportional to the seriousness of the infringement. In particular, the AGCM decided not to add a specific increase for deterrence to the basic amount of the fine, even though the Authority deemed that this case deserved it²⁷.

²⁶ See Case n. [A524 - LEADIANT BIOSCIENCES/FARMACO PER LA CURA DELLA XANTOMATOSI CEREBROTENDINEA](#), infringement decision no. 30156, published on the AGCM Bulletin n. 21/2022. See also the [AGCM press release of 31 May 2022](#) and the [English courtesy translation of the decision](#).

²⁷ Under paragraph 25 of the [AGCM Sanctioning Guidelines](#), “[t]he Authority may increase the fine up to 50% if in the last financial year closed before the date of the infringement decision the total worldwide turnover of the undertaking responsible for the infringement was particularly high

*Case n. A536 Tender procedures for local public transport by road in Tuscany Region*²⁸

60. In June 2022, the AGCM sanctioned 3.6 million euros the Consorzio ONE S.c.a.r.l. (ONE), a consortium of incumbents active in the field of public transport by road in Tuscany (urban and extra-urban). ONE grouped all incumbent companies operating in the 14 lots in which the territory of Tuscany Region was divided in previous tenders. The investigation started following a complaint from Tuscany Region and Autolinee Toscane S.p.A (AT), a newcomer awarded with the provision of public transport in Tuscany.

61. The Authority's investigation pointed out the dilatory and obstructive strategy put in place by ONE aimed at delaying the entry of AT, consisting in a refusal to provide or delays in the transfer to AT of essential assets (real estate, buses and other rolling stock) as well as information and data that were indispensable to allow for a smooth transition from the old contractors to the new one.

62. The Authority noted that the companies in ONE were the sole holders of the essential facilities and information, necessary for the performance of the service. ONE's dilatory conduct resulted in damages to both the procurement agency (Tuscany Region), which had to reorganise public transport road services in a less efficient and more costly manner during the transition phase, and to end-users, who had not been able to benefit timely from a qualitatively and quantitatively better service offered by AT.

63. For all these reasons, the Authority found that ONE abused its dominant position and infringed Article 102 TFEU. This case is relevant for several reasons: first, Tuscany Region is one of the first regional authorities in Italy that has used competitive tender procedures for awarding local public transport services; second, the size and scope of the tender, which grouped in one lot the entire administrative regional territory, has been one of the largest so far in the sector; third, the tender winner AT is a foreign "newcomer" that belongs to a French group (RAPT).

*Case n. A548 Mastercard: foreclosure of Bancomat payment cards from digital wallets*²⁹

64. In October 2022, the AGCM accepted and made binding the commitments presented by Mastercard Europe SA, with respect to Mastercard's Mandate, adopted in July 2021. The Mandate imposed a "double-tap" procedure (consisting in the obligation to place the card twice at the POS) for contactless debit card payments using the so-called co-badged cards (that is, cards bearing two circuits, typically the Bancomat's and one international circuit like Visa or Mastercard). This provision prevented co-badged cards from making single-tap payments (i.e. payment by placing the card only once). The "double-tap" procedure was envisaged also for contactless transaction through digital wallets. The geographical scope of the Mandate was limited to the Italian territory.

65. The Authority considered that Mastercard holds a dominant position in the Italian market for debit card payments. Its preliminary assessment outlined that the

compared to the value of the sales of goods or services related to the infringement or if the undertaking belongs to a group of significant economic dimensions".

²⁸ See Case n. [A536 - REGIONE TOSCANA/ GARA PER L'AFFIDAMENTO DEL SERVIZIO DI TRASPORTO PUBBLICO LOCALE](#), infringement decision no. 30205, published on the AGCM Bulletin no. 27/2022.

²⁹ See Case n. [A548 - BANCORMAT/MANDATO MASTERCARD](#), infringement decision no. 30334, published on the AGCM Bulletin n. 39/2022.

implementation of the double-tap procedure would have resulted in an entry barrier for other payment schemes, as long as it would impede the enrolling of co-badged cards on the smartphones' digital wallets. In particular, Mastercard conduct would have led to the foreclosure of Bancomat cards from the digital wallets of those smartphone manufacturers that only use the "single-tap" procedure. As a consequence of the conduct under scrutiny, those manufacturers would have refused to introduce Bancomat cards in their digital wallet, preferring to only keep Mastercard cards. As a matter of fact, following the adoption of the Mandate by Mastercard, smartphone producers stopped negotiations with Bancomat, while they continued negotiations with Mastercard so as to progress with the enrolment of Mastercard's debit cards on their digital wallets.

66. More generally, Mastercard's behaviour could have discouraged the use of co-badged debit cards by consumers, as it would make payments more complex. Ultimately, it could have disincentivized the issuance of co-badged debit cards, in favour of Mastercard's single-brand cards. Noteworthy, Mastercard's conduct occurred at a crucial stage of technological development of digital wallets, as well as of significant growth in its use by consumers.

67. During the investigation, Mastercard first suspended the application of the Mandate and then proposed commitments, aimed at eliminating its binding nature and the related penalties for failure to migrate to double-tap. In addition, the commitment package included a provision to compensate operators who had migrated to single-tap mode in the meantime. This case is interesting because of the interaction between the regulation of the payment systems and the technological constraints of the operating systems of smartphone devices with respect to digital wallets.

2.2. Mergers and acquisitions

2.2.1. Statistics

68. As regards mergers, the Authority reviewed 98 transactions: four required an in-depth investigation in Phase II; 90 were authorised in Phase I; two were dismissed with no grounds for action due to the inapplicability of the merger law; two related to the revision of merger remedies previously imposed or the non-compliance with notification obligations.

69. In one instance (see below), the Authority issued a prohibition decision. The transaction was considered suitable to lessen competition in the electricity generation in the Sicily Region, having regard to the features of these auction-based markets and the pivotal role of the acquirer, Enel, the incumbent operator.

70. The other three Phase II cases were closed with remedies. In two cases concerning retail distribution, the AGCM measured the closeness of competition of the merging parties by estimating diversion ratios and other indicators such as UPPI and GUPPI. These cases are further described below.

2.2.2. Summary of significant merger cases

*Case no. C12461 – Merger in the electricity markets in Sicily*³⁰

71. In September 2022, the Authority blocked the acquisition by Enel Produzione S.p.A. (belonging to the Enel Group) of the company ERG Power S.r.l, owner of the Sicilian power generation site in Priolo.

72. The relevant markets identified were: 1) the production and wholesale supply of electricity; 2) the dispatching services (where Terna S.p.A. operates on the demand side in order to acquire from electricity operators the resources needed to ensure the correct functioning of the electricity grid and to build up reserve capacity margins). The geographical dimension of the markets was identified in the macro-zone Sicily.

73. The post-merger entity would have held a share of 35-40% of the capacity installed and the electricity produced at wholesale level in Sicily. Moreover, in the market for the dispatching services, the merged entity would have reached a share of at least 65%. The AGCM also considered the features of these markets, *in primis* their organization in auctions, and studied the pivotal role of the acquirer, Enel, the incumbent operator.

74. As a result of the investigation, the Authority concluded that the acquisition of ERG Power by the Enel group would have led to the elimination of one of the most effective competitors in both the relevant markets. The Authority prohibited the merger, pursuant to Article 18 (1) of the Competition Act.

*Case no. C12410B – Merger in the wholesale and retail markets for pet products*³¹

75. In February 2022, the Authority authorized with conditions the acquisition of joint control of Arcaplanet and Maxi Zoo by Cinven Capital Management (VII) General Partner Limited (hereby Cinven) e Fressnapf Beteiligungs GmbH (hereby Fressnapf). Arcaplanet and Maxi Zoo are respectively the first and third retail chains specialising in pet products at national level.

76. The transaction involved two relevant markets: a) the wholesale supply of pet products; b) the retail distribution of such products through specialised retail shops (including online sales). With regards to retail distribution, the investigation showed that supermarkets are not part of that relevant market, in view of their low substitutability with the outlets of the specialised channel, due to the differences in terms of type and homogeneity of product range, shopping experience and price.

77. However, the AGCM ascertained a greater substitutability between specialised outlets and the online channel, arguing for the inclusion of the latter in the relevant market. In terms of the geographical dimension, while the first market was considered to be of national scale, the retail was found to have a local dimension due to the purchasing behaviour of consumers and the importance given to the proximity of sales outlets.

78. According to the Authority, the transaction was suitable to create a dominant position of the post-merger entity on both relevant wholesale and retail markets. To

³⁰ See the AGCM case no. [C12461 - ENEL PRODUZIONE/ERG POWER](#), final decision no 30306, published on the AGCM Bulletin no 36/2022.

³¹ See the AGCM case no [C12410B - CINVEN CAPITAL MANAGEMENT-FRESSNAPF BETEILIGUNGS/AGRIFARMA - MAXI ZOO ITALIA](#), final decision no 30037, published on the AGCM Bulletin no 9/2022.

alleviate the competition concerns, the Authority imposed remedies, such as the divestiture of retail outlets to existing competitors. To assess the closeness of competition of merging parties in local markets, the AGCM commissioned a survey on shoppers at outlets to estimate the diversion ratios, a measure of substitutability, and other indicators of competitive pressure.

*Case no. C12488 – Merger in the retail markets of personal care and household products*³²

79. In December 2022, the Authority conditionally cleared a merger between Bubbles BidCo S.p.A. e Quattro S.r.l. The notified transaction consisted in the acquisition of Quattro S.r.l. (owner of the “Saponi & Profumi” chain, specialised in the retail sale of personal care and household products, operating only in Sardinia with 62 sales outlets) by Bubbles, a company owning 25 stores in Sardinia under the brand Acqua & Sapone.

80. The relevant market identified was the retail distribution of cleaning and hygiene products for home and personal care. The relevant geographic market was defined through isochrones of 15 minutes driving time, which led to identify 35 local markets in Sardinia in which the concentration produced horizontal overlaps.

81. The Authority found that the transaction was likely to result in a lessening of competition via the creation or strengthening of a dominant position in nine local markets and in the elimination of an important competitive constraint in the remaining markets, thus making it possible for the merged entity to raise prices.

82. Finally, the AGCM decided to clear the transaction, subject to the divestiture of more than ten sales outlets by Bubbles, in the geographical areas which raised the most serious competition concerns. To assess the closeness of competition of merging parties in the local markets, the AGCM commissioned a telephone/online survey to estimate, through an econometric model, how consumer choose the alternatives to their preferred stores.

2.3. Estimation of expected benefits

83. The Authority carries out a periodic assessment of the benefits that consumers derive from its antitrust and merger decisions, following an OECD methodology³³. This exercise is aimed at increasing transparency and accountability of its activities and measure its contribution to social welfare.

84. The tables below show the results of the analysis of the impact of the AGCM enforcement activity from 2015 to 2022. The data refer to the investigations closed each year for restrictive agreements, abuses of dominant position and concentrations, even if launched in previous years.

85. Over the entire period under consideration, total consumer savings exceeded 8 billion euros. In the last three years, the annual savings for the national economy amounted to 1.3 billion euros (see Table 3).

³² See the AGCM case no. [C12488 - BUBBLES BIDCO/QUATTRO](#), final decision no. 30404, published on the AGCM Bulletin no 46/2022.

³³ See OECD, [Guide for helping competition authorities assess the expected impact of their activities](#), April 2014.

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

	2015-2017	2016-2018	2017-2019	2018-2020	2019-2021	2020-2022
Cartels and other anticompetitive agreements	436	379	702	550	686	297
Abuses	111	187	186	274	475	576
Mergers	58	38	95	293	373	390
Total	606	604	984	1,117	1,534	1,262

86. Over the entire period under consideration, half of consumer savings comes from the fight against cartels, followed by abuses and mergers (see Table 4). In terms of trends, it is worth noting the increasing contribution of the merger review activity and the contrast to abuses of dominant position.

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

	2015-2017	2016-2018	2017-2019	2018-2020	2019-2021	2020-2022	2015-2022
Cartels and other anticompetitive agreements	72%	62.7%	71.4%	49.3%	44.7%	23.5%	49.2%
Abuses	18.4%	31.0%	18.9%	24.6%	31.0%	45.6%	29.8%
Mergers	9.6%	6.3%	9.7%	26.1%	24.3%	30.9%	21.0%

3. The Role of the Competition Authority in the Formulation and Implementation of other Policies

3.1. Opinions and recommendations

87. The AGCM issued 62 opinions/recommendations in 2022. In 40 cases, the Authority highlighted restrictions of competition arising from existing or draft legislation, urging for amendments³⁴. The AGCM also addressed administrative acts by local authorities in 22 occasions, while highlighting its power to challenge them before the Administrative Tribunal if the local administrations were not to comply with AGCM's recommendations³⁵. These opinions mainly related to tender procedures, regulations concerning authorization system to carry out business activities and markets undergoing a liberalization process. Moreover, seven opinions addressed competition restrictions in the professions sector and one opinion provided an advice to the Transport Regulator with

³⁴ 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.

³⁵ 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.

respect to the design of motorways concessions regime³⁶. In 2022, the AGCM also held three hearings before the Parliament on various topics.

88. The AGCM's regular monitoring of competition advocacy showed that 66% of the opinions issued in 2020 and 2021 were successful, insofar as they spurred amendments intended to remove the relevant competition concerns. Compared to the previous two-year period, 2019-2020, the overall compliance rate is growing overall (it was 61%)³⁷.

89. In the aftermath of the war in Ukraine and the subsequent energy crisis, the Authority swiftly reacted to the surge in retail fuel prices by performing a monitoring activity that deterred potential anticompetitive practices, while using its consumer protection powers to ensure clear and transparent information on the demand side³⁸. More recently, the Authority has launched a sector inquiry to analyse competition concerns in the extraction and refining stages of the energy supply chain and fuel price dynamics in the retail distribution.

3.2. Description of significant advocacy interventions

3.2.1. Advocacy for the annual law on pro-competitive reforms for year 2022

90. Pursuant to the national legislation, the Government shall submit an annual bill on competition to Parliament that takes into account any recommendations submitted by the Authority (so called "annual law on competition"). Therefore, since 2010, the AGCM has submitted every year to the government a report including all its advocacy proposals. Furthermore, under the National Recovery and Resilience Plan (NRRP), Italy has to implement pro-competitive reforms by adopting the annual law on competition in 2021, 2022 and 2023³⁹.

91. In March 2021, the Authority issued 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 term⁴⁰. Many of the proposals have been implemented by Law no. 118/2022 (the "annual law on competition" for 2021) which addresses a variety of sectors: concession regimes, local public services and transport,

³⁶ Pursuant to Art. 3 of Legislative Decree 142/2020⁴, regulatory bodies (e.g., Regions and Ministries), in the context of their analysis of the impact of regulatory or administrative acts introducing new provisions that restrict access to regulated professions or their exercise or amend existing ones, shall carry out a proportionality assessment of such provisions and before their final adoption shall transmit a draft to the AGCM for an opinion.

³⁷ See the English version of the [December 2022 report](#).

³⁸ See the AGCM contribution to an OECD Roundtable *Competition in Energy Markets – Note by Italy*, for more information about the AGCM activities in the energy markets in 2022.

³⁹ 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 August 2017, the Parliament adopted a law on pro-competitive reforms, for the first time complying with the 2009 legislation, on the basis of the 2014 AGCM proposal. In August 2022, the Parliament introduced a second package of pro-competitive reforms based on an advocacy report submitted by the AGCM in 2021.

⁴⁰ 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. See section 3.2 of the AGCM 2021 annual report.

energy and environmental sustainability, health protection, the development of digital infrastructure and the removal of administrative barriers to economic activities⁴¹. It also introduced changes to the competition law framework (described in section 1 above).

92. In March 2022, the Authority issued another advocacy report containing suggestions for the annual law for competition for 2022; this report is focused on the liberalization of the electricity and gas markets⁴². In particular, the Authority advocated for a set of measure at different stages of the electricity supply chain (transmission, distribution, retail), which could foster a decrease in wholesale and retail electricity prices.

93. The first measure proposed is a simplification in the administrative procedures for the authorization to build new electricity grid, in order to increase the network capacity and mitigate the risk of congestion at transmission nodes, thus limiting market access from more efficient power generation plants.

94. In addition, in order to facilitate the development of innovative, efficient and competitive energy markets, the Authority has encouraged the deployment of second-generation smart electricity meters for monitoring the electricity consumption of end customers, in particular through the adoption of specific legislative and/or regulatory acts of guidance for consumers, which could ensure the full effectiveness of the regulation.

95. Finally, the Authority advocated for the definitive exit from the regulated tariff regime of domestic customers and, at the same time, the identification of a regulated regime for so-called "vulnerable" electricity customers. In identifying the suppliers for this new category of customers to be protected, the Authority pointed out the need to define ways that are not distortive of competition.

3.2.2. Advocacy in the concessions sector

96. The Authority provided a contribution in response to a public consultation launched by the Transport Regulatory Authority (ART) in the area of motorways concessions⁴³. The AGCM welcomed the adoption by the ART of a set of regulatory measures aimed at the preliminary definition of the tender schemes to be used by motorway concessionaires for the purposes of sub-contracting services provided at fuel distribution service areas (so-called oil), including refreshment services (so-called non-oil) and electric recharging services located along the national motorway network.

97. In order to stimulate competition, both at the stage of selecting of sub-concessionaires and during the provision of the services, the AGCM provided comments on the tender schemes with respect to several elements, including the number and duration of the tender contracts to be used for the different goods/services, the notion of indispensable goods (to be shared by the different sub-contractors), and price mitigating measures on end-users with respect to oil and non-oil services.

⁴¹ Certain provisions included in the annual law on competition for 2021 are directly applicable: for examples, on natural gas, environmental sustainability, waste management, health and pharmaceuticals and electronic communications. Other provisions entrust the Government to draft systemic reforms such as those concerning the local public services and the concession regimes.

⁴² See the AGCM opinion no. [AS1824 - PROPOSTE DI RIFORMA CONCORRENZIALE RELATIVE A I SETTORI DELL'ENERGIA ELETTRICA E DEL SERVIZIO IDRICO INTEGRATO A I FINI DELLA LEGGE ANNUALE PER IL MERCATO E LA CONCORRENZA ANNO 2022](#), published on the AGCM Bulletin no 13/2022.

⁴³ See the AGCM opinion no. [AS1821 - BANDI DI GARA DEI CONCESSIONARI AUTOSTRADALI](#), published on the AGCM Bulletin no 12/2022.

98. With respect to maritime state concessions for touristic purposes, the Authority reiterated that clauses granting automatic renewal of the concessions are restrictive. In a case related to bathing establishments⁴⁴, it argued that the tender requirement of having exercised bathing-related activities for at least three of the last five years was neither necessary nor proportional, and called for the repeal of such requirement.

1.1.1 Advocacy to promote entry in the tourism and drug distribution

99. Several advocacy interventions aimed at removing provisions that were considered disproportionate or unduly restrictive of business activity. In some cases, the Authority emphasised the discriminatory effects produced by some provisions, unjustifiably favouring some undertakings to the detriment of others.

100. A law adopted by the Lazio Region (Law no. 8 of 24 May 2022) envisaged the possibility, for the Metropolitan City of Rome, to introduce specific authorization requirements for the providers of “Airbnb-style” accommodation services, for the purposes of “*environmental and landscape protection and historical, artistic, archaeological and monumental heritage, as well as environmental sustainability, infrastructural logistics, mobility and liveability necessary for the use of places by the community*”. The Authority, consistently with previous interventions on this matter, stated that the choice of the regional legislator could constitute not only an unjustified restriction of the freedom of economic initiative, but also a discrimination against other types of hotel and non-hotel accommodation activities that were not expressly mentioned in the law, such as bed & breakfasts and holiday homes⁴⁵. The Authority was of the view that the principles of strict necessity, proportionality and non-discrimination, mentioned by the law under scrutiny, were not satisfied.

101. With respect to pharmaceutical distribution, the Authority highlighted some competition concerns in a resolution of the Regional Council of the Emilia Romagna Region, which reserved for pharmacies the sale of certain disposable medical devices reimbursable by the National Health Service. This provision excluded orthopaedic health care companies and so-called para-pharmacies (i.e., outlets that sell pharmaceutical products for which a medical prescription is not required)⁴⁶. The Authority considered that this choice introduced undue discrimination between operators, leading to a reduced range of products and a limited number of sales outlets available to consumers.

⁴⁴ See the AGCM opinion no. [AS1836 - COMUNE DI ROSIGNANO MARITTIMO \(LI\) – ASSEGNAZIONE CONCESSIONE DEMANIALE MARITTIMA](#), published on the AGCM Bulletin no 20/2022.

⁴⁵ See the AGCM opinion no. [AS1848 - REGIONE LAZIO-MODIFICHE LEGGE REGIONALE ORGANIZZAZIONE DEL SISTEMA TURISTICO](#), published on the AGCM Bulletin no 26/2022.

⁴⁶ See the AGCM opinion no. [AS1817 - REGIONE EMILIA ROMAGNA - EROGAZIONE DISPOSITIVI MEDICI MONOUSO](#), published on the AGCM Bulletin no 6/2022.

4. Resources of the Competition Authority

4.1. Annual Budget

102. The annual expenses incurred by the Authority in 2022 totalled EUR 60.2 million (provisional data)⁴⁷. 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

103. The total number staff of the AGCM at the end of 2022 was 274. This includes all human resources, tasked with performing both competition and non-competition competences. As of 31 December 2022, 141 employees worked in competition area, 39 of whom were support staff and 102 non-administrative staff. The latter group comprised 51 lawyers, 40 economists and 11 other professionals (e.g. IT experts, one data scientist).

104. A new organisation of the offices of the Italian Competition Authority was introduced in January 2023⁴⁸. It is based on nine departments, of which two strictly focus on antitrust matters. The first one deals with cartels and digital platforms, the second with all the other sectors of the economy. Three new investigative branches were created: a Directorate dedicated to Cartels, Leniency and Whistleblowing, another to Digital Platforms, one dealing with Concessions and Local Public Services. The Legal Affairs Department, which attends to procedural guarantees, litigation and legal research, and the Economic and Market Analysis Department, which ensures economic analysis and fact-finding inquiries, provide investigative departments with legal and economic assistance. Furthermore, a new Directorate for Market Studies has been established.

4.3. Performance assessment

105. In October 2022 the AGCM published a performance assessment of 2021⁴⁹. The report shows that the AGCM has made progress in reaching its operational objectives, such as focusing enforcement and advocacy on the economic sectors most at risk, improving the quality of legal and economic analysis, promoting leniency programs, fostering coordination with regulators, reducing duration of investigations, and providing faster advocacy opinions to policymakers. In February 2023, the Authority approved its performance plan covering the period 2023-2025⁵⁰.

⁴⁷ 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 0.058 per thousand, set in March 2023. The income derived from these contributions replaces all previous forms of financing (merger fees and funds from the public budget).

⁴⁸ For more information, click on the [link](#).

⁴⁹ See the report (in Italian only): [AGCM, Relazione sulla performance 2021](#).

⁵⁰ See the report (in Italian only): [Piano della Performance 2023-2025](#).