

Unclassified

English - Or. English

27 November 2024

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

**Cancels & replaces the same document of 19 November 2024**

## **The Interaction between Competition and Democracy – Note by Italy**

6 December

This document reproduces a written contribution from Italy submitted for Item 8 of the 144<sup>th</sup> OECD Competition Committee meeting on 5-6 December 2024.

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**JT03556362**

## *Italy*

### 1. Introduction

1. Several unique aspects of the Italian legal and economic framework align with the view that competition policy can support democratic governance by addressing the balance between economic and political power.
2. Notably, two landmark rulings by the Constitutional Court in 2024 recognised the importance of competition for the economic and social system, extending beyond the traditional consumer welfare standard by enhancing freedom of choice for citizens and businesses. Additionally, the Court highlighted that competition entails the freedom to innovate, which underpins an efficient market and serves consumer interests.
3. By the same token, the Italian legislator has acknowledged the link between economic and political power by elevating competition to a fundamental principle in media services regulation. In recognition of the connection between economic and political influence, and the importance of transparency and accountability, the legislator has granted the Italian Competition Authority (hereafter the Authority or the AGCM) three atypical powers: monitoring the award of transport services by local authorities; identifying conflicts of interest and incompatibilities among government officials; and managing a “Legality Rating System” that evaluates companies’ compliance efforts across various legal areas, including anti-bribery, antitrust, and data protection laws.
4. Although democratic values are not explicitly embedded within Italy’s competition policy framework (e.g., there are no theories of harm based on democratic principles), the AGCM’s experience demonstrates how competition authorities can support democratic values such as transparency, accountability, fairness, and inclusivity in their priorities, case selection, acceptance of commitments, and the imposition of sanctions and remedies. Examples include the Authority’s actions on excessive pricing in the pharmaceutical sector, its robust efforts against bid-rigging, and its focus on protecting independent players when enforcing legislation on economic dependence or accepting commitments.
5. The AGCM also recognises the importance of incorporating democratic values into competition regimes. Since its inception, Italy’s competition policy framework has been built on principles of independence, transparency, fairness, and accountability, embedded in both investigative and decision-making processes. Over time, the Authority has fostered greater public participation, particularly in its guidance and procedural rules.
6. As emphasised by competition authorities and policymakers at the 2024 G7 Competition Summit, hosted in Rome by the AGCM, the interplay between competition and democracy has become increasingly relevant in a world where technological advancements and globalization are reshaping market dynamics and impacting individuals as both citizens and consumers. Economic power can influence political power, leading to a concentration of both that undermines democratic processes. Concentrated economic power can lead to lobbying and political capture, where the interests of a few dominate the political landscape, thereby eroding democratic principles.
7. In this contribution we explore the links between competition and democracy in Italy (section 2), the role of democratic values in the AGCM’s competition assessments (section 3) and how the functioning of Italy’s competition regime has been increasingly democratised (section 4). Section 5 provides some concluding remarks.

## 2. The Links between Competition and Democracy

### 2.1. Competition in the Italian Constitution

8. Competition was not included as a value in the Italian Constitution of 1948. After twenty years of fascist dirigisme and corporatism, there was a prevalent scepticism towards the market as a means for organising the economy, with the market itself being regarded as a disvalue. Indeed, Article 41 of the Constitution, while recognising the freedom of private economic initiative, states that it may be constrained in cases of conflict with social utility or harm to fundamental human rights<sup>1</sup>. Additionally, Article 43 offers nationalisation as a solution to private economic power.

9. It was only in subsequent decades, with Italy's involvement in the formation of the European Communities, that the free market took on a more positive connotation. The imperative of market integration, based on the principles of free movement, openness, access and non-discrimination embedded in the European Treaties, began to influence the Italian legal framework.

10. From the 1960s to the 1980s, State intervention in the economy expanded, particularly through direct participation and ownership of enterprises. When competition law was introduced in 1990 - significantly later than in other founding members of the European Communities - it was seen as a principal tool for market liberalisation, curbing state monopolies and restrictive regulations, in response to growing EU economic integration and the challenges of globalisation. In other terms, the introduction of competition law and the establishment of an independent antitrust authority were also conceived as remedies to the excesses of state power.

11. Starting in the 1990s, the constitutional jurisprudence began to appreciate the protection of competition as a constitutional value, as a means to limit state intervention and guarantee a level playing field<sup>2</sup>. The exercise of state power, like private power, was viewed as requiring control to ensure it would not conflict with the social utility deriving from the proper functioning of a European common market.

12. Following a constitutional reform in 2001, which reallocated certain competencies between the State and the Regions, competition was formally mentioned into the Italian Constitution as a subject matter falling under the exclusive legislative power of the State<sup>3</sup>. This recognition has been crucial in ensuring the unity and consistency of competition policy across the country, necessary for the proper functioning of markets and for preventing or eliminating restrictions on competition imposed by local authorities. Indeed, disputes between the Regions and the State before the Constitutional Court have often seen

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<sup>1</sup> It reads as follows: “*Private economic enterprise shall have the right to operate freely. It cannot be carried out in conflict with social utility or in such a manner as may harm health, the environment, safety, liberty and human dignity. The law shall determine appropriate programmes and checks to ensure that public and private economic enterprise activity be directed at and coordinated for social and environmental purposes.*”

<sup>2</sup> Amato, G. (1997), “Antitrust and the bounds of power: the dilemma of liberal democracy in the history of the market”.

<sup>3</sup> Constitutional Law No. 3 of 18 October 2001 carried out an incisive reform of the previous constitutional design concerning the system of local self-government and relations with the state (governed by Title V of the Constitution), according to a federalist orientation, which would allow for a greater enhancement of the levels of government closest to the territory.

the latter curbing attempts by the Regions to dilute or evade liberalisation reforms approved at the state level.

13. However, in 2024, the Constitutional Court issued two landmark rulings (see BOX 1 below), which for the first time elaborated on the concept of competition and its importance for the economic and social system, going beyond the traditional balancing of free economic activity and public interests. Both rulings stem from challenges to regional regulations concerning car hire services with drivers vis-à-vis regulated taxi services. They are significant because the Court made two key statements.

14. First, the promotion of competition can contribute to the protection of certain rights beyond the traditional boundaries of the consumption of goods and services, a view echoed by the Authority (see section 2.2 below). In stating that the overarching goal of competition law is to extend the freedom of choice for citizens and businesses, the Constitutional Court recognised a value of constitutional relevance that extends far beyond consumer welfare.

15. The second key point relates to the definition of competition, a concept previously unexamined by the Court. It is now clearly stated that competition is, above all, the freedom to innovate, as this freedom underpins an efficient market and serves the interests of consumers. This interpretation, developed for the first time by the constitutional jurisprudence, holds significant potential for developments not only in non-scheduled transport but in areas such as digital and AI markets, where innovation plays a critical role.

### Box 1. The 2024 Constitutional Court's rulings

In 2024, the Constitutional Court issued two landmark rulings stemming from challenges to regional regulations concerning car hire services with drivers (NCC) vis-à-vis regulated taxi services.

In Judgment No. 36 of 2024, the Government challenged a provision of the Region of Calabria which had intervened to regulate taxi services, allowing municipalities to experiment with innovative forms of offering services to users. The Region, however, had therefore extended the power to provide innovative services also providers of NCC services. The Government, taking the view that this extension was contrary to the discipline dictated by the national law (21/1992), brought an action before the Court for infringement of the State's competence in matters of competition. The Court has sided with the Region of Calabria stating that the national law does not contain any radical and indiscriminate ban on the provision of innovative services for those providing NCC services. The Court affirmed that non-scheduled road transport services contribute to giving 'effectiveness' to freedom of movement, 'which is the condition for the exercise of other rights.

In Judgment No. 137 of 2024, the Court raised concerns about the constitutional legitimacy of Article 10 bis, paragraph 6, of Decree-Law No. 135 of 2018, which imposed a ban on issuing new NCC authorisations "until the national public computerised register of taxi and NCC operators is fully operational." The Court found that the structure of the regulation allowed for the indefinite suspension of new authorisations, as evidenced by the fact that, more than five years after the provision came into force, the register was still not operational. The Court questioned whether the restriction was genuinely motivated by social utility or public interest, suggesting instead that it appeared to serve protectionist interests. It stated that the blocking or suspension of authorisations essential to carrying out economic activities may constitute

an unjustified barrier to market access, thereby infringing on the freedom of market access guaranteed by the first paragraph of Article 41 of the Constitution.

16. This significant development in constitutional jurisprudence has been influenced by the AGCM's perspective on the role of competition in promoting democracy, as outlined below.

## 2.2. The AGCM's approach to competition and democracy

17. As the primary competition advocate to the central government and local authorities, the Authority has emphasised that competition is fundamentally grounded in democratic principles and is essential for maintaining an open, free and inclusive society. Moreover, competition serves as the social glue of the capitalist system, i.e., it is the indispensable condition for ensuring that the market creates wealth, while at the same time ensuring the well-being of consumers and contributing to social justice.

18. The crises of recent years - from the 2007 financial crisis and the 2011 sovereign debt crisis to the severe depression caused by the 2020 pandemic - have undermined the balance between democracy, market-based economy, and social cohesion that characterised the political landscape since the end of the Second World War in Europe and Italy, where economic challenges such as high debt levels and low competitiveness have resulted in prolonged stagnation. Failure to address these economic challenges could pave the way for populism and fundamentalism, further eroding trust in democracy.

19. In its appearances before Parliament during key moments in Italy's recent economic history<sup>4</sup>, the AGCM has advocated for a profound transformation of the production system in order to address those economic challenges, and for a market economy that is both "social" and "dynamic". On one hand, the Authority has called for social policies to accompany the transformation of the economy towards a path of economic growth: social policies are important to ensure workforce retraining, fair access to opportunities, support for entrepreneurship, and the promotion of economic mobility and inclusion. On the other hand, the AGCM has stressed how effective competition, which rewards the most innovative firms while sidelining those that fail to enhance their competitiveness, is key to a dynamic economy.

20. In this context, the Authority has raised concerns about Italy's competitiveness and low productivity, noting not only the low barriers to entry but also low barriers to exit. The presence of "zombie firms"—those that would not survive in truly competitive markets—creates systemic inefficiencies and hinders the growth of healthy firms, discouraging investment and employment.

21. Additionally, the AGCM has highlighted that Italy's prevalent model of capitalism is not devoid of privileges and positional rents, which could worsen inequalities, create a closed and static society, and stifle competition and innovation. These features undermine individuals' aspirations to improve their social standing based on merit, thus eroding equality of opportunity.

22. In summary, the Authority has consistently highlighted that only with a clear path to economic growth, supported by appropriate social policies and a merit-based, dynamic capitalism, Italy can successfully reduce its debt ratio and secure the resources necessary

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<sup>4</sup> See for instance Chairman Rustichelli's [presentation of the 2023 AGCM annual report to Parliament](#).

for redistributive programs and the social cohesion they safeguard. To support this path to economic growth, the AGCM has provided its contribution to the pro-competitive reforms implemented by the Governments in recent years. The Authority's proposal addressed a variety of sectors: concession regimes, local public services and transport, energy and environmental sustainability, health protection, the development of digital infrastructure and the removal of administrative barriers to economic activities<sup>5</sup>.

23. Furthermore, the AGCM has emphasized that a competitive environment fosters creativity and freedom of expression, both essential for a plurality of ideas. It cultivates an atmosphere where diverse political viewpoints can thrive, thereby strengthening the foundations of democracy. This is why specific regulations exist in the media sector. BOX 2 summarizes the main elements of the Italian framework where competition and media pluralism are fundamental principles of audio-visual media services.

24. Finally, the Italian legislator has long recognised the link between economic and political power, and the importance of transparency and accountability, by giving the Authority three atypical powers which, on closer examination, are related to its core mission of protecting consumers and competition.

25. First, a 2022 reform introduced a unified regulatory framework for local public services, including local public transport, and assigned the AGCM the responsibility of monitoring local authorities' adherence to rules governing the processes for awarding local transport service contracts<sup>6</sup>.

26. Second, a law on conflicts of interest for government officials was adopted in 2004, giving the Authority the power to identify situations of incompatibility and conflict of interest and to monitor compliance with the law, reporting to Parliament every six months<sup>7</sup>.

27. Third, in 2012, a reward mechanism was introduced to incentivise companies to comply with legal standards (the so-called "Legality Rating System"), whereby the AGCM assigns a rating at the request of companies based on their compliance efforts in various legal areas, including anti-bribery, antitrust and data protection laws. This compliance rating system can be used by the rated company to access better credit from banks and

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<sup>5</sup> See the AGCM contributions (over the period 2021-2024) to the government's formulation of pro-competitive reforms to be included in the National Recovery and Resilience Plan, an EU-funded instrument aimed to help post-pandemic economic recovery of EU Member States. In particular, see the AGCM opinion no. [ASI730 "PROPOSTE DI RIFORMA CONCORRENZIALE AL FINI DELLA LEGGE ANNUALE PER IL MERCATO E LA CONCORRENZA ANNO 2021"](#), published on the AGCM Bulletin no 13/2021.

<sup>6</sup> Legislative Decree No. 201 of 23 December 2022 regulates in detail the awarding and management of local public services, especially the use of in-house, imposing significant reporting, motivation and transparency obligations on local authorities. It allocated additional resources to the AGCM to support its expanded responsibilities. Consequently, a dedicated unit, the Concessions and Local Public Services Directorate, was established.

<sup>7</sup> Law no. 215 of 20 July 2004 aims to ensure that the decisions of public officials (i.e. the Prime Minister, Vice-Presidents of the Council of Ministers, Ministers, Deputy Ministers, Secretaries of State and Special Commissioners of the Government) are guided exclusively by the public interest and are therefore protected from conflicts of interest, which arise when public officials also have, directly or indirectly, private interests that may conflict with the public interest. The law contains a list of inherent incompatibilities between public positions and other roles. However, conflicts of interest can still arise when government officials fail to take mandatory action or make decisions that favour their personal interests or those of their relatives, to the detriment of the public interest.

public funds and, most importantly, can be taken into account by contracting authorities when designing public tenders<sup>8</sup>.

### Box 2. Media Pluralism and Competition in Italy

The importance of maintaining a competitive environment to protect democratic values and prevent market power from translating into political influence is especially evident in the media and communications sector.

In 2005, Italy established a comprehensive legal framework for media freedom and pluralism safeguards, in line with Article 21 of the Constitution, through the Consolidated Act on Radio and Audiovisual Media Services (known as TUSMAR).<sup>9</sup> This legislation introduced various measures to guarantee freedom and pluralism in the media, including caps on revenue shares (“anti-concentration limits”) that companies may hold across the electronic communications sector and the “Integrated Communications System” (SIC)—a broad category encompassing audiovisual media services such as TV, radio, and press. These caps aim to prevent excessive concentration and ensure a diverse media landscape. As part of its mandate to protect pluralism, the Communications Regulator (AGCOM) is responsible for verifying the absence of dominant positions in the SIC and related markets that could undermine pluralism, as well as for enforcing compliance with anti-concentration limits.<sup>10</sup>

In addition, AGCOM is also competent for the assessment of media market concentrations in parallel to the AGCM and can adopt measures to stop those concentrations that may result in the formation of positions of significant market power that are detrimental to media pluralism. To this end, AGCOM follows a traditional competition law approach by conducting investigation aimed at the identification of the relevant markets, as well as the establishment of dominant or which could damage pluralism in the field of audio-visual media services. Among the different powers to protect external pluralism, the AGCOM, on the occasion of mergers or agreements between parties operating in the SIC, carries out the specific checks on compliance with the anti-concentration limits on the number of authorizations for the provision of television or radio programs and the revenues generated.

<sup>8</sup> For an overview of this rating system, see the AGCM written contribution submitted for the Roundtable on Director Disqualification and Bidder Exclusion ([https://one.oecd.org/document/DAF/COMP/WD\(2022\)107/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2022)107/en/pdf)), Item 4 of the 139th OECD, Competition Committee meeting on 29-30 November 2022.

<sup>9</sup> Legislative Decree No. 177 31st July 2005.

<sup>10</sup> For instance, as indicated by the [2024 country report](#) of the Centre for Media Pluralism and Media Freedom of the European University Institute, AGCOM “[...] determined the total economic value of the SIC for 2021. [...] Among the resources constituting the SIC, those related to advertising in traditional and online media (including sponsorships) prevail, representing 53.6% of the total. Revenues from product and service sales follow (attributable to audiovisual media services, daily and periodical press, news agencies, electronic publishing, including the internet, and cinema), weighing 33.7%. Finally, revenues from the public broadcasting service fee and agreements and subsidies granted to entities operating in the SIC represent 12.6% of the total. In this context, Comcast/Sky ranks first, with its revenues representing 16.1% of the SIC, while RAI, with a 14.4% share of total resources, ranks second. Fininvest group follows, with an overall share of 10.3%. Among other actors, online platforms stand out, with Alphabet/Google, META/Facebook, Netflix, and Amazon ranking fourth, fifth, eighth, and ninth, respectively, with shares below 8%.” (page 7)

AGCOM also plays a crucial role in assessing media market concentrations alongside the AGCM. It has the power to take actions against concentrations that may lead to significant market power detrimental to media pluralism. In fulfilling this role, AGCOM applies traditional competition law principles, conducting investigations to identify relevant markets and establish whether any dominant positions could harm pluralism in the audiovisual media sector. As part of its powers to protect external pluralism, AGCOM reviews mergers or agreements involving parties operating within the SIC to ensure compliance with anti-concentration limits on the number of authorisations for television or radio broadcasting and the revenue generated.<sup>11</sup>

This regulatory framework was updated in 2021, following the transposition of Directive (EU) 2018/1808 into Italian law and in response to technological and market changes. The revised legislation, known as TUSMA,<sup>12</sup> introduced two significant changes. First, it elevated competition and media pluralism to fundamental principles of the audiovisual media services, radio, and mass media system, as well as the advertising market. Unlike the previous TUSMAR framework, which focused on “protecting” competition, TUSMA emphasises “promoting” competition as a tool for safeguarding pluralism, explicitly prohibiting the establishment of significant market power positions that could threaten pluralism.

Second, the updated framework significantly expanded the indicators and metrics that the sectoral regulator must consider when evaluating market power and its impact on pluralism. Recognising the radical transformation of the media landscape due to digitalisation and the rise of global digital platforms that act as gatekeepers within their ecosystems, the legislation shifted AGCOM’s approach from a formalistic focus on market share thresholds to a more economically grounded analysis. This change reflects the need to address the new risks to freedom of information posed by the dominance of large digital platforms.<sup>13</sup>

The new law also mandates that AGCOM develop guidelines<sup>14</sup> for assessing dominant positions in its investigations. Additionally, it introduces a mandatory notification system for all agreements and mergers within the SIC that meet the specified thresholds under competition law, as well as other criteria based on market share. Companies under

<sup>11</sup> In addition, all press, radio, and audiovisual media outlets, as well as search engines and online intermediation services are required to register in the Register of Communication Operators (ROC) – managed by AGCOM – and disclose information on their ownership structures.

<sup>12</sup> Legislative Decree No. 208 of 8 November 2021.

<sup>13</sup> In particular, in order to determine whether an undertaking or group of undertakings is in a situation of significant market power detrimental to pluralism, Art. 51, para 5 of TUSMA requires AGCOM to “take into account, *inter alia*, in addition to revenues, the degree of static and dynamic competition in the system, barriers to entry, convergence between sectors and markets, synergies arising from activities carried out in different but contiguous markets, vertical and conglomerate integration of undertakings the vertical and conglomerate integration of companies, the availability and control of data, the direct or indirect control of necessary scarce resources such as broadcasting frequencies, the economic efficiency of the company, including economies of scale, coverage and network, as well as the quantitative diffusion indices of radio and television programmes, including news programmes, cinematographic works, publishing and on-line products and services. On the basis of these criteria, the Authority shall establish the specific methodology for the review referred to in this paragraph by means of guidelines to be reviewed at least every three years”.

<sup>14</sup> With Resolution No. 66/24/CONS of 6 March 2024, AGCOM adopted the new [Guidelines](#) pursuant to Art. 51, para 5 of TUSMA, as a result of a consultation process.



investigation may propose behavioural and structural commitments. If AGCOM deems these commitments sufficient to eliminate or prevent significant market power detrimental to pluralism, they will be made binding.

### 2.3. Competition and democracy in the digital era

28. The relationship between competition and democracy has taken on even greater significance with the digitalisation of the economy. There is growing recognition of the risks posed by tech-driven market dominance, where a small number of digital platforms control vast amounts of data, economic transactions, and, ultimately, influence over public discourse. Calls have been made for competition policy to adapt to these new realities in order to protect democratic values from being undermined by the concentration of economic and informational power. Competition policy can play a crucial role in mitigating societal risks such as the distortion of information and the monopolisation of public discourse, both of which are vital for maintaining healthy democratic debates.

29. In this context, through its enforcement records<sup>15</sup> the Authority has underscored the importance of putting technology at the service of citizens and consumers, striving for a fair and competitive digital economy, as well as an open, democratic, and sustainable digital society. New concentrations of power have emerged, not only in terms of “market power” but also as broader economic and political power, posing risks to the protection of fundamental rights, competition, pluralism, and the resilience of democratic systems.

30. These risks are likely to be exacerbated by the spread of AI technologies. At the G7 Competition Summit hosted by the AGCM in October 2024 (see BOX 3 below), G7 competition authorities acknowledged that competition encourages innovation, which not only enhances the range of economic offerings but also promotes the diversity of ideas and approaches essential for a democratic society.

#### Box 3. Main outcomes of the 2024 G7 Competition Summit in Rome

Representatives of G7 competition authorities and policymakers, met in Rome on 3-4 October 2024 to discuss competition concerns raised by the rapid and widespread development and deployment of technologies based on Artificial Intelligence (AI), including Generative AI (GenAI) foundation models and algorithms. The G7 Competition Summit concluded with a joint declaration (Communiqué) on the urgency of addressing competition issues in the digital realm, fostering innovation, and safeguarding consumer interests through collaborative and adaptive regulatory measures.<sup>16</sup>

<sup>15</sup> Recent Italian antitrust cases aimed at ensuring contestable digital markets have addressed the following issues: refusal to deal and interoperability (case Google/Enel X), data value and portability (case Google/Hoda), access and visibility in online marketplaces (Cases Amazon FBA and Apple/Amazon), privacy and advertising (case Apple ATT, on-going), parity clauses (case Booking, on-going). For more information see: [OECD Note for 2024 G7 on Competition Policy in Digital Markets](#) and [2023 G7 Compendium of Approaches to Improving Competition in Digital Markets](#).

<sup>16</sup> See G7 Competition Authorities and Policymakers’ Summit, [Digital Competition Communiqué](#), Rome, Italy, 4 October 2024.

The Communiqué outlines guiding principles designed to ensure that societies can effectively benefit from artificial intelligence (AI) while fostering competition and innovation in the rapidly evolving AI landscape. Key principles include (paragraph 9):

- **Fair Competition:** AI markets should remain open and competitive, free from harmful practices by dominant companies. Measures will be taken to prevent these firms from abusing their positions to hinder competition, and the misuse of AI technologies for anti-competitive purposes will be actively monitored.
- **Fair Access and Opportunity:** Ensuring equitable access to essential inputs in the AI supply chain is crucial for fostering innovation. Encouraging openness, such as sharing certain training data, will facilitate market entry and enhance competition among AI systems.
- **Choice:** Consumers and businesses should have diverse options among AI products and services, supported by clear information to make informed decisions. A variety of business models will promote resilience and choice in the market.
- **Interoperability:** Promoting interoperability and open technical standards can drive innovation and prevent market dominance by closed systems. Data portability is also encouraged to enhance competition while maintaining privacy and security.
- **Innovation:** The principles emphasize the importance of nurturing an environment that supports the development of new technologies and business models in AI, with transparency regarding their capabilities and applications.
- **Transparency and Accountability:** Building trust in AI requires transparency about data sources, model training, and the limitations of AI systems. Developers and deployers must be accountable, ensuring consumers and businesses are informed of potential risks associated with AI technologies.

Furthermore, G7 nations addressed the potential societal impacts of AI that may be heightened by insufficient competition. Key concerns include:

- **Human Innovation and Copyright:** Generative AI systems often depend on human-created content for training, which can disadvantage creators. This reliance may lead to under-compensation and stifled creativity, particularly in a monopolistic environment where large AI firms exert monopsony power over content creators. Promoting competition in the market for copyrighted materials could ensure fair compensation and encourage further creative contributions.
- **Consumer Protection:** AI-generated outputs can mislead consumers and distort their decision-making processes. It is crucial to ensure that AI systems provide accurate information to maintain consumer trust and support a healthy competitive landscape.
- **Privacy and Data Protection:** The development of AI systems frequently involves extensive use of personal data, which must be managed in compliance with privacy regulations. Safeguarding personal data is essential for maintaining public trust. A competitive AI market can help mitigate harmful practices and enhance privacy protections.

*“Overall, these risks, especially when combined, can significantly affect the diversity of voices, the range and quality of choices available to consumers and businesses, and the*

*quality and reliability of information available to the public. Such developments could undermine informed discourse and concentrate power over information and decision-making processes” (paragraph 8).*

### 3. The role of democracy in the application of competition law

31. Although democratic values are not explicitly incorporated into Italy’s competition policy framework (e.g., there are no theories of harm based on democratic principles), there is a potential to strengthen the role of democracy as the framework’s objective extends beyond merely promoting economic efficiency to safeguarding consumer welfare in a broader sense, including considerations on quality, variety, and innovation. This perspective allows the AGCM not only to combat economic power concentration but also pursue long-term benefits of democracy - such as fairness, inclusivity, and public goods provision (e.g., health, education, environment) that are protected by the Italian Constitution - and integrate some democratic principles - such as transparency and accountability - when setting priorities, selecting cases, accepting commitments, and imposing sanctions or remedies, as illustrated by the examples below<sup>17</sup>.

32. The AGCM enforcement experience has highlighted how the relationship between competition and democracy is closely connected to issues of fairness and social justice, especially in times of crises. The AGCM has taken proactive steps to monitor sectors where crises have had a profound impact, particularly on vulnerable groups even when price volatility and supply shortages typically result from supply-side shocks and not from competition restrictions.

33. For instance, during the 2022 energy crisis sparked by the war in Ukraine, the Authority launched an ex-officio monitoring into the automotive fuel market. This action, aimed at sending a strong signal to the market, acknowledged that a volatile market environment increases the likelihood of anti-competitive behaviour, especially amid rising prices<sup>18</sup>. Similarly, in the wake of the COVID-19 pandemic, the Authority promptly informed the business community that it would not actively intervene against necessary and temporary measures taken to prevent shortages or disruptions in sectors affected by the health emergency. In this context, the AGCM also used its consumer protection powers in the healthcare and pharmaceutical sectors, complementing its competition oversight in order to mitigate the effects of price spikes on essential items such as hand sanitizers and face masks. Additionally, during the lockdowns, the AGCM prioritised connectivity services to ensure that access to the Internet for remote working and schooling in less

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<sup>17</sup> The work of 2024 Nobel Laureates Acemoglu, Johnson, and Robinson establishes a strong link between democratic governance and economic growth, highlighting the importance of inclusive political institutions as catalysts for sustainable development. Their findings challenge traditional views that favour authoritarian regimes for rapid economic progress, advocating instead for the long-term benefits of democracy. Authoritarian regimes can achieve economic growth without necessarily implementing democratic reforms, though the sustainability and quality of that growth may vary significantly. Historical examples show that as economies develop, the inherent contradictions within authoritarian systems may lead to demands for greater political freedoms, suggesting that while initial growth is possible without democracy, enduring success often requires a transition toward more inclusive governance structures.

<sup>18</sup> See the written contribution from Italy submitted for the Roundtable on Competition in Energy Markets ([https://one.oecd.org/document/DAF/COMP/WP2/WD\(2022\)37/en/pdf](https://one.oecd.org/document/DAF/COMP/WP2/WD(2022)37/en/pdf)), Item 3 of the 74th OECD Working Party 2 meeting on 28 November 2022.

commercially attractive areas was not hindered by anti-competitive practices from dominant players<sup>19</sup>.

34. The AGCM's commitment to fairness extends to supporting small businesses against abuses of economic dependence by companies with significant bargaining power over their counterparties. Such abuses can have detrimental effects on competition, prompting the Authority to actively enforce measures against these practices<sup>20</sup>. Prompted by the AGCM, the legislation on abuse of economic dependency has been adapted 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<sup>21</sup>.

35. In reviewing mergers in the publishing sector, the Authority has accepted commitments to ensure that competition delivers quality and diversity, with particular attention to small independent bookshops and publishers<sup>22</sup>. The AGCM also intervened to promote labour mobility by accepting commitments to remove exclusivity clauses, imposed by five publishers and two industry associations on promoters of books used in schools, which prevented promoters from working for rival publishers without the consent of their existing publisher.<sup>23</sup> More recently, the Authority has launched a market study into the school educational publishing markets to investigate critical issues that are recurrently

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<sup>19</sup> See the written contribution from Italy submitted for the Roundtable on The Role of Competition Policy in Promoting Economic Recovery ([https://one.oecd.org/document/DAF/COMP/WD\(2020\)78/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2020)78/en/pdf)), Item 2 of the 134th OECD Competition Committee meeting on 1-3 December 2020.

<sup>20</sup> The AGCM is empowered to apply the abuse of economic dependence legislation (Article 9, paragraph 3-bis, of Law No. 192/1998) when such abuses impact competition in the market. In 2022, the Authority concluded three investigations with commitments aimed at restoring balance in contractual relationships in various sectors: clothing, fast food, and telecom retail. For instance, the AGCM assessed several clauses and conditions imposed on McDonald's franchisees, as well as certain practices during the pre-contractual phase, which appeared to significantly limit the negotiating power and options of prospective franchisees. The commitments accepted by the AGCM resulted in substantial changes to the pre-contractual framework, ensuring that potential franchisees are fully informed about the terms of the agreement, including the obligations, commitments, and expected profitability of operating a McDonald's restaurant. Additionally, the changes aimed to reduce the costs associated with training activities.

<sup>21</sup> See Article 9 of law no. 192/1998 on abuse of economic dependence, as amended by Article 33 of Law n. 118/2022. 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; and 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

<sup>22</sup> In one merger case concerning distribution of books (C12274 - EMMEEFFE LIBRI/CENTRO LIBRI), the vertically integrated merging parties committed not to interrupt the existing commercial relations or worsen their commercial conditions (discounts on the cover price, packaging port, payment terms) with respect to independent bookshops. In another case (C12393 - ARNOLDO MONDADORI EDITORE/DE AGOSTINI SCUOLA), the acquirer committed not to lower the investment of the target in the creation of new textbook content for a three-year period. This measure, by protecting the content of the target offer from the risk of degradation, contributed to safeguarding the quality and "biblio-diversity" of the entire market offer.

<sup>23</sup> See the AGCM case no. 1848 - *PROBLEMATICHE CONCERNENTI L'ATTIVITÀ DI PROMOZIONE NEL MERCATO DELL'EDITORIA SCOLASTICA*, commitment decision no. 29894 of 16/11/2021, published on the AGCM Bulletin no. 48/2021.

subject of public consideration, such as price trends, frequent changes in book editions, difficulties in supply and distribution methods, possible rigidities in methods for selecting school books, also in light of the technological innovations in the sector<sup>24</sup>.

36. Considerations on health as a fundamental right protected by the Constitution have long guided the AGCM's focus on cases involving the healthcare and pharmaceutical sectors. The Authority's interventions emphasised the importance of access to healthcare and affordable medicines, particularly during periods of stringent budgetary constraints. Enforcement efforts targeted exclusionary practices aimed at delaying the entry of generic drugs or biosimilars<sup>25</sup>, as well as excessive pricing imposed on the National Health System (NHS)<sup>26</sup>, thereby increasing consumer choice, lowering prices, and ensuring patients' access to essential treatments. In excess pricing cases, considerations of the life-saving nature of the medicine in question, its irreplaceability for the most vulnerable groups of the population and the impact on the NHS budget played a role in assessing the gravity of the conduct and in determining the amount of the fine<sup>27</sup>.

37. Similarly, the protection of the environment is a fundamental value enshrined in the Italian Constitution (Article 9), and it can justify constraints on the freedom of private enterprise (Article 41). Italy's experience has so far demonstrated that, on the contrary, competition policy can play a significant role in supporting environmental protection and the transition to a greener economy. By promoting innovation and ensuring a level playing field for businesses, competition policy can deliver positive outcomes for consumers and citizens, both in the short and long term<sup>28</sup>.

38. Effective competition policy can strengthen other core democratic values, such as transparency and accountability, by promoting open and fair market practices, reducing opportunities for corruption, and ensuring that economic decisions serve the public interest. In addition, the AGCM has raised significant concerns about potential conflicts of interest in cases where local authorities play a dual role - acting both as the procurer and as a bidder – through their shareholdings in incumbent companies.

39. The AGCM has consistently underscored this connection in its enforcement actions against bid-rigging in public procurement. Through advocacy efforts, it has also sought to

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<sup>24</sup> See AGCM press release of 11 September 2024, available at: <https://en.agcm.it/en/media/press-releases/2024/9/IC57>

<sup>25</sup> The AGCM has been at the forefront of challenging excessive pricing in the European pharmaceutical sector. See the written contribution from Italy submitted for the Roundtable on Generic Pharmaceuticals ([https://one.oecd.org/document/DAF/COMP/WD\(2014\)50/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2014)50/en/pdf)), Item VI of the 121st meeting of OECD Competition Committee on 18-19 June 2014.

<sup>26</sup> See the written contribution from Italy submitted for the Roundtable on Excessive Pricing in Pharmaceutical Markets ([https://one.oecd.org/document/DAF/COMP/WD\(2018\)106/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2018)106/en/pdf)), Item 9 of the 130<sup>th</sup> OECD Competition Committee meeting on 27-28 November 2018.

<sup>27</sup> As a result, the AGCM deemed appropriate in these cases to include in the basic amount an additional amount up to 30% of the value of the sales of the goods or services subject to the infringement (so-called entry fee), as envisaged by point 17 of its sanctioning guidelines.

<sup>28</sup> See the written contribution from Italy submitted for the Roundtable on Competition in the Circular Economy ([https://one.oecd.org/document/DAF/COMP/WD\(2023\)37/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2023)37/en/pdf)), Item 7 of the 140th OECD Competition Committee meeting on 14-16 June 2023, and the Roundtable on Environmental Considerations in Competition Enforcement ([https://one.oecd.org/document/DAF/COMP/WD\(2021\)49/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2021)49/en/pdf)), Item 1 of the 136th OECD Competition Committee meeting on 1-3 December 2021.

raise awareness among procurement agencies about the importance of well-designed tender procedures in reducing the scope for anti-competitive conduct and corruption<sup>29</sup>. The Authority has refined its proactive detection tools, launching ex-officio investigations through cooperation with other public authorities, including procurement agencies and public prosecutors' offices, finance and tax police, public procurement agencies<sup>30</sup>.

40. The above examples demonstrate how the Authority's efforts to protect competition have also upheld core values of Italian democracy, even without an approach that explicitly incorporates democratic values into competition assessments.

41. Finally, as an agency with consumer protection powers, the AGCM has benefited from a privileged perspective in trying to address market malfunctioning from the demand side as well. This has been particularly true in the digital sector: by exploiting complementarities and synergies with competition law and existing regulation, the Authority's consumer protection enforcement has contributed to safeguarding democratic values in the digital economy. For example, the Authority has applied consumer law to raise consumers' awareness of how gatekeepers use their personal data in the provision of current and future services, including those based on generative AI, so that they can make more informed choices<sup>31</sup>. In addition, the AGCM believes that consumer law enforcement, in synergy with ex-ante regulation, can encourage all platforms - not just the dominant ones - to implement more effective control mechanisms to reduce quality degradation caused by issues such as scams from *deepfakes* and *cheapfakes*, safeguard users against AI misuse that distorts their purchasing decisions through the spread of automatically generated fake

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<sup>29</sup> The Authority has a long-standing partnership with Consip, the central government procurement agency, such that all tenders planned by Consip are reviewed by the Authority prior to their launch, providing an opportunity to make suggestions on the design of the tenders. In addition, in October 2013, the AGCM launched an initiative to assist procuring entities in identifying and reporting to the Authority behavioural anomalies that may indicate the existence of bid rigging. In particular, the AGCM addressed to all procuring entities a handbook (so-called "Vademecum"), based on the [OECD Guidelines for Combating Bid Rigging in Public Procurement](#) of February 2009, with tips and hints on how to identify signals of potential bid rigging.

<sup>30</sup> In January 2018, in the context of the already well-established and full cooperation, the AGCM signed two Memoranda of Understanding with the Public Prosecutor's Offices of Rome and Milan in order to join forces in the fight against crimes against the public administration (in particular bid-rigging), including through timely access to confidential information relating to criminal and administrative proceedings within their respective jurisdictions. Since May 2004, cooperation with the Guardia di Finanza has been very fruitful in terms of information obtained for the opening of ex officio proceedings.

<sup>31</sup> In July 2024, the AGCM initiated an investigation into Google for an unfair commercial practice that may impact users' decisions regarding whether and to what extent they consent to Google's cross-use of their personal data. See [AGCM press release of 18 July 2024](#). In November 2021, the AGCM fined Apple and Google for some unfair and aggressive commercial practices related to the utilization of user data, such as the omission of information about the collection and use of personal data and the set-up of an opt-in as default option for data sharing consent. Moreover, the AGCM fined WhatsApp in 2017 and Facebook in 2018 for some unfair and aggressive commercial practices related to the utilization of user data such as the omission of information, deception in the collection and use of personal data, opt-in as default option for data sharing consent. See Case no PS10601, [press release of 12 May 2017](#), Case no PS11112, [press release of 7 December 2018](#) and [press release of 17 February 2021](#). For an overview of these two consumer protection cases, see the AGCM contribution ([https://one.oecd.org/document/DAF/COMP/WD\(2020\)33/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2020)33/en/pdf), section 4) to the 2020 OECD Roundtable Consumer Data Rights and Competition.

reviews and misleading information, and combat the rise of deceptive advertising and increasingly sophisticated phishing attacks.

#### 4. The democratic functioning of Italy's competition policy

42. Another important aspect of the relationship between democracy and competition concerns the potential for greater integration of democratic principles into the functioning of the competition regimes. Over time, parliamentary and judicial scrutiny of the Authority's investigative tools, procedural rules, and decision-making powers, along with the progressive alignment with EU framework, including the European Convention on Human Rights (ECHR), and its best practices, such as better regulation standards, have contributed to a more democratised competition regime in Italy.

43. The enactment of the competition law itself followed an extensive parliamentary debate, setting high standards for transparency and accountability in the AGCM's advocacy and enforcement actions. Among the various issues considered, particular attention was paid to the powers of the Authority in relation to other institutions and the exceptions to the prohibition on anti-competitive mergers. As for the latter, Parliament deemed it inappropriate for a "technical" body like the AGCM to authorize otherwise anticompetitive mergers in the "interest of the national economy" beyond its specific economic competences, and it assigned the responsibility to the Government to establish the relevant criteria<sup>32</sup>.

44. In addition, the 1990 Competition Act granted the Authority full independence in order to prevent it from being influenced by the tensions and pressures of power, whether political or economic, in the performance of its assigned task. The AGCM's full independence is particularly evident in its financial resources, which no longer come from the State budget but are based on annual contributions from companies<sup>33</sup>.

45. Furthermore, since its inception, the Authority's investigative and decision-making processes have been built on very high due process standards to ensure compliance with principles such as transparency, accountability, predictability, right of defence, and confidentiality. Notable features of the AGCM's investigative procedures include the formal notification of the investigation and its content, a specified timeline for the proceedings, and the option for a final hearing before the AGCM's board<sup>34</sup>.

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<sup>32</sup> Pursuant to Art. 25 of the Competition Act, the Authority may be asked to exceptionally authorise concentrations that would otherwise be problematic from a strict competition point of view, provided that they meet certain criteria to be defined ex-ante by the Government.

<sup>33</sup> 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 0.059 per thousand, set in March 2024. The income derived from these contributions replaces all previous forms of financing (merger fees and funds from the public budget).

<sup>34</sup> In Italy, the decision to launch an investigation coincides with the opening of formal proceedings, allowing for early engagement with the parties, who are granted access to the case file. The opening decision is sent to all undertakings under investigation, listing the names and activities of the involved parties and detailing the alleged anti-competitive conduct and the potentially affected markets. Furthermore, the decision to open an investigation specifies a deadline for its completion (typically one year), though this can be extended either at the request of the parties or if the Authority determines additional time is necessary, for example, to thoroughly assess evidence or gather further

46. The democratic principle of public participation has been increasingly embedded in the AGCM's procedures. For example, expanding opportunities for public consultation on procedural rules and gathering input on competition policy decisions have become integral to the Authority's *modus operandi*. Soon after the government's decision in 2023 to give the Authority the power to impose behavioural and structural remedies as a result of market studies (i.e., without finding an infringement)<sup>35</sup>, the AGCM launched a public consultation to gather feedback on a proposed process and procedure for regulating the various phases, including the remedies phase. This approach, in line with the principles of transparency, predictability, fairness and participation, aimed to appropriately defining the Authority's discretion in the application of this powerful tool, while at the same time providing useful guidance to economic operators.

47. Additionally, some aspects of competition procedures have been evaluated in light of the ECHR. For instance, the AGCM has used wiretap evidence obtained by public prosecutors in criminal investigations (e.g., bribery cases), despite falling outside its investigative powers. The review courts ruled that the acquisition of such evidence did not violate Article 8 of the ECHR concerning privacy<sup>36</sup>: the right to confidentiality diminishes and ceases to apply when the activity of wiretapping is provided for by law and - as observed by the Strasbourg Court itself - constitutes a necessary instrument in a democratic society to pursue a legitimate aim, such as the establishment of the truth in a criminal trial and the protection of public order.

48. In 2009, a new participatory tool was introduced, requiring the government to submit an annual bill to Parliament proposing pro-competitive reforms, also on the basis of AGCM proposals, after a review of existing legislation to identify regulatory barriers that unjustifiably restrict competition and innovation<sup>37</sup>. Designed explicitly to enhance competition as a driver for efficiency, economic growth, and social cohesion, this legislative mechanism facilitates a more consistent and systematic discussion of pro-competitive reforms beyond the parliamentary setting. The annual presentation of these bills has contributed to the democratisation of Italy's competition policy by encouraging

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information. Finally, another important feature is that, after responding to the statement of objections, parties may request a final hearing before the Authority's Board prior to the issuance of a final decision on the case. For more information, see [Italy's submission to the ICN Framework for Competition Agency Procedures \(CAP\)](#).

<sup>35</sup> Article 1, paragraph 5 of Decree-Law No. 104 of August 10, 2023, supplements and expands the powers of the AGCM in conducting market studies as outlined in Article 12, paragraph 2, of the Competition Act. The Decree-Law mandated the AGCM to apply these new fact-finding powers in the context of the domestic airline passenger sector in response to high price levels registered during the summer of 2023. Prompted by the AGCM, the Council of State, Italy's highest administrative court, confirmed the new tool applies to all sectors and is not limited to the airline market.

<sup>36</sup> The Court considered that the right to confidentiality recedes and does not operate when the activity of wiretapping is provided for by law and - as observed by the Strasbourg Court itself - constitutes a necessary tool in a democratic society to pursue a legitimate aim, such as that of ascertaining the truth in a criminal trial and the protection of public order.

<sup>37</sup> Pursuant to Article 47(2) of Law 99/2009, the Government shall submit to Parliament an annual bill on pro-competitive reforms taking into account any recommendations proposed by the Authority. Since 2010, the AGCM has been submitting reports to the government with advocacy proposals for the annual competition law. In August 2017, Parliament, for the first time, adopted a law in accordance with the 2009 legislation, based on the AGCM's 2014 proposals. By 2021, this mechanism had become the primary legislative tool for enacting pro-competitive reforms that the Government pledged to implement under the Italian National Recovery and Resilience Plan (NRRP) to secure EU funding to respond to the pandemic crisis.



stakeholder participation - particularly from civil society - and increasing public awareness of key competition issues.

49. The Authority's competition and consumer enforcement actions in the digital economy have highlighted the need for a more holistic approach in evaluating the impact of market dynamics on democratic process as other aspects such as media pluralism and data protection are inextricably intertwined. Recognising the intersection with other areas of law and the need for a multidisciplinary approach, the AGCM has promoted a more intense cooperation with privacy and communications regulators.

50. These efforts illustrate Italy's recent initiatives to ensure a democratic approach to competition policy, given the complexity of regulatory mechanisms and the specialised nature of competition institutions.

## 5. Concluding remarks

51. Antitrust laws have historically played a crucial role in maintaining the balance of power within liberal democracies, by preventing the concentration of market power that could undermine political equality. As discussed in the previous sections, Italy's Constitutional Court, the Italian Competition Authority and other political institutions have recognised competition as not only a catalyst for freedom, the exchange of ideas, and innovation, but also a driver of social cohesion and development<sup>38</sup>. Nevertheless, the AGCM acknowledges that competition must duly integrate with other policies to contribute to safeguarding democratic processes, particularly in the context of digital platforms and their influence on public discourse and electoral processes.

52. The Authority believes that antitrust laws should focus on consumer welfare - albeit in a broad sense as outlined above - and could hardly extend to the direct preservation of democratic institutions and processes. The latter objective would seem to require the adoption of a holistic approach, which might be challenging to design and implement, as it would likely require at least an expanded mandate for competition authorities and closer cooperation with other regulators, such as those responsible for media pluralism, and data protection<sup>39</sup>.

53. The relationship between competition and democracy should also be examined from the opposite perspective: how the quality of democracy within a jurisdiction affects the effectiveness and reach of its competition policies. Indeed, competitive markets require

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<sup>38</sup> At the annual meeting of the Italian Federation of Retailers on 12 June 2024, President Mattarella eloquently praised the role of retail trade in Italian history: "*It is a vehicle for freedom. Freedom to do. Freedom to trade. Freedom of enterprise. Of consumer choice. [...] It is innovation. It is circulation of consumption, of customs, of ideas. Trade accompanies the growth of people; it feeds, with access to goods, the society of well-being. The one that Italy has known with the Republic, after the Liberation. That society guaranteed by peace, achieved in Europe with the realization of the Union. Trade is thus a service to social cohesion, a drive for development. An essential tool for goals such as environmental sustainability. [...] Our Constitution recognizes the value of private economic initiative. Constraints, dominant positions, and dirigisme always end up invading the field of other freedoms as well, thus weakening democracy itself. [...] Cohesion, the balance between individual and common good, are factors of growth and wealth, while inequalities and imbalances restrain markets themselves.*" (emphasis added – unofficial English translation).

<sup>39</sup> See Ariel Ezrachi, Viktoria H S E Robertson, *Can competition law save democracy? Reflections on democracy's tech-driven decline and how to stop it*, Journal of Antitrust Enforcement, 2024; jnae043, <https://doi.org/10.1093/jaenfo/jnae043>.

inclusive economic institutions, i.e., institutions protecting property rights, providing equal opportunities for all individuals, and encouraging participation in economic activities. In well-functioning democracies with strong institutions, competition laws are more likely to be enforced consistently and fairly, free from undue influence by powerful interests. Conversely, in jurisdictions where democratic norms and institutions are weakened, the enforcement of competition laws risks to be undermined. This can translate into selective enforcement, regulatory capture, or tolerance of monopolistic practices, distorting both market competition and democratic governance. Ensuring the independence of regulatory agencies, particularly in terms of financial resources, is therefore of paramount importance, and the AGCM funding system is a positive example in this respect.

54. Finally, the Authority acknowledges the importance of incorporating democratic criteria into competition regimes. The 1990 legal framework was designed based on the values of transparency and accountability embedded in decision-making processes, while the AGCM has also fostered greater public participation, particularly regarding its procedural rules. By aligning with democratic values, institutions like the Authority remain robust and responsive to the needs of Italian citizens and markets.