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Competition in the Circular Economy – Note by Italy

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<https://www.oecd.org/competition/competition-in-the-circular-economy.htm>

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1. Introduction

1. The Autorità Garante della Concorrenza e del Mercato (hereafter the Authority or the AGCM) welcomes this roundtable as an opportunity to contribute, based on the experience gained in a number of important cases concluded in the last few years, to the ongoing debate about the relationship between competition and circular economy, in order to explore the incentives and dynamics that circular economy creates in the markets that are relevant to competition analysis¹.

2. In recent years, a worldwide transition to a circular economy (CE) model has been attracting progressively the interest of all the relevant actors of the society such as governments, companies, consumers and their associations, research centres/universities and other institutions, as this decade is considered to be crucial in achieving the goals of the UN 2030 Agenda and Sustainable Development².

3. The concept of circular economy emphasizes the importance of reducing waste and preserving resources by extending the lifespan of products and materials through practices such as reuse, repair, and recycling. The transition to a circular economy can have significant implications for competition laws and policies, which are designed to promote market efficiency and consumer welfare.

4. The AGCM has addressed considerations about circular economy mainly in the waste management and recycling sector, in the context of some antitrust investigations (abuses of dominant positions and agreements) and advocacy opinions. The AGCM also addressed aspects of the circular economy from the perspective of consumer protection legislation, dealing with the issue of planned obsolescence of electronic devices with a view to extending their lifespan.

5. This contribution therefore describes the background to the circular economy in Italy (section 2), outlines the Authority's experience in promoting the circular economy in the waste management and recycling sector both through competition enforcement and advocacy (section 3) and through its consumer protection powers (section 4). Section 5 concludes with some considerations.

2. Circular economy: Italy's framework and performance

6. In 2021, Italy adopted the National Recovery and Resilience Plan (NRRP), as part of the Next generation EU program, with the aim of advancing a green and sustainable transition. In this context, the National Strategy for the Circular Economy and the National Waste Management Program (NWMP), two reforms envisaged by the NRRP and approved

¹ Following the example of other competition agencies, the AGCM has set up a Sustainability Taskforce to build expertise and a consistent approach to sustainability issues across the different areas of its remit (in particular, competition law and consumer protection).

² At EU level, the target is a reduction of greenhouse gas emissions by 55% below 1990 levels by 2030.

in June 2022, outline the future framework for the ecological transition of the country, identifying the actions, targets and measures to be pursued.

7. The creation of a market for secondary raw materials, a more effective application of the Extended Producer Responsibility (EPR), the improvement of the circularity of upstream markets (e.g., extension of the lifetime of products and their repairability) are included among the main objectives outlined in the National Strategy and have guided the actions of the AGCM as described below. Similarly, some of the objectives of the Waste Management Program, such as investing in more efficient treatment and recycling plants and improving the rates of recycling or treatment of waste, have oriented the Authority's interventions in the waste management sector.

8. The domestic legislative initiative stems from the EU Circular Economy Package launched in 2015 and reinvigorated in 2021 by the European Green Deal and the EU Action Plan for the Circular Economy, establishing a programme of action with measures and legislative proposals to support the transition towards the CE and a sustainable development. In particular, the Action Plan aims at accelerating the transition towards a circular and regenerative economy, with a special focus on the design of sustainable products, on circularity in production processes, as well as in sectors with high resource intensity and environmental impact (including plastics, textiles, buildings, electronics, food, batteries, vehicles).

9. The scarcity of raw materials and supply-chain disruptions choked the post-pandemic growth of Italy's classic linear economic model and contributed to the current situation of high input prices and inflation. Against this backdrop, the transition towards circular consumption and production patterns may be seen as a way not only to ensure ecological sustainability but also to foster a more robust economic recovery and stable economic development, by reducing the exposure to high prices of virgin raw materials and their effects on the economies³. While Italy is in a good position in Europe on circular economy, the full potential of the circular economy is yet to be materialised and could have contributed to better neutralise the effects on the Italian economic outlook of persisting high prices of raw materials and disruptions in the supply-chains⁴.

3. The AGCM approach to circular economy: the case of waste management and recycling sector

3.1. A key priority

10. The Authority considers that a rigorous application of competition rules in some sectors of critical importance for circular economy, such as the waste management and recycling sector, can strongly contribute to achieve the objectives of Italy's National Strategy for the Circular Economy and the National Waste Management Program.

³ See European Commission, [New Circular Economy Action plan](#), March 2020.

⁴ See the English executive summary of the [4TH REPORT ON CIRCULAR ECONOMY IN ITALY](#), May 2022. According to this report, compared to the other four major economies (France, Germany, Spain and Poland) in 2020 Italy scored relatively high on several international metrics such as resources productivity, the material circular use rate (the ratio between the circular use of materials and the overall consumption of materials), renewable energy consumption and waste recycling. This trend has been confirmed by the [5TH REPORT ON CIRCULAR ECONOMY IN ITALY](#), May 2023.

Moreover, in the AGCM view, the circular economy may contribute to higher economic growth⁵. All this is consistent with the domestic and EU framework on circular economy.

11. In March 2021, the AGCM formulated a set of pro-competitive reforms in an advocacy report for the purposes of the so-called “annual law on competition”, and submitted the report to the President of the Council of Ministers⁶. The fifth chapter of the report⁷ tackles the interlink between competition and environmental sustainability. One of the subsections takes a closer look at the role of competition in promoting a circular economy in the waste sector.

12. In this subsection, the AGCM underlines that competition is essential to allow secondary raw materials obtained from waste recovery processes to find appropriate route to “new markets”, enabling them to replace virgin ones in production processes. This makes it possible to limit the use of scarce resources which are subject to price fluctuations, typical of commodities. At the same time, dynamic competition stimulates innovation, especially in the new supply chains that are emerging on the back of European and national circular economy policies. In fact, innovation has become an increasingly important driver for the waste management industry⁸.

13. Therefore, the AGCM advised the Government to consider a coordinated set of interventions to sustain some of the business models that could support the transition to a more resource efficient and circular economy⁹.

14. First, the Authority highlighted that the sector is very fragmented (made up of thousands of small private and public operators, and a few large ones), thus lacking of the necessary scale for reaching efficiencies; in addition, the prevalent way for procuring such

⁵ See, *inter alia*, Cambridge Econometrics, Trinomics and ICF (2018), [Impacts of circular economy policies on the labour market](#), Report for the European Commission. According to these studies, the circular economy has the potential to increase EU GDP by an additional 0.5 per cent by 2030, creating around 700,000 new jobs.

⁶ Pursuant to Article 47(2) of Law 99/2009, the Government shall submit an annual bill on pro-competitive reforms to Parliament that takes into account any recommendations submitted by the Authority. Therefore, since 2010, the AGCM has submitted every year to the Government a report including its advocacy proposals.

⁷ 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. For a summary in English, see section 3.2 of the *Annual Report on Competition Policy Developments in Italy – 2021*, [https://one.oecd.org/document/DAF/COMP/AR\(2022\)19/en/pdf](https://one.oecd.org/document/DAF/COMP/AR(2022)19/en/pdf).

⁸ In this respect, the Authority notes that in Italy the potential stimulus to innovation that could derive from waste processing activities is not yet adequately exploited, considering that the number of patents related to recycling activities amounted to only 14 in 2016, which is far lower than in countries such as Germany and France, where the number of patents rises to 67 and 36 respectively. See:

https://ec.europa.eu/eurostat/databrowser/view/CEI_CIE020_custom_355163/bookmark/table?lang=en&bookmarkId=2f9c5749-a486-4dbe-8cd9-974884540f79.

⁹ In particular, the AGCM interventions were aimed at sustaining circular supply models (which replace traditional material inputs derived from virgin resources with bio-based, renewable, or recovered materials) and resource recovery models (which recycle waste into secondary raw materials, thereby diverting waste from final disposal), as defined by the OECD in its classification. See OECD (2019), [Business Models for the Circular Economy: Opportunities and Challenges for Policy](#).

services are in-house providing and direct awarding which favour inefficient incumbents. Therefore, the AGCM recommended a greater use of competitive tender procedures for the awarding of the waste collection services by local authorities (“competition for the market”).

15. Second, it was noted that often concessions granted by local authorities unduly include a number of activities along the supply chain, such as recovery and disposal activities, which may be carried out under the free market regime (“competition in the market”). For this reason, the Authority called for a narrower scope of the waste activities to be put under a concession regime. Similarly, the AGCM advocated for the repeal of certain provisions discriminating between public and private operators¹⁰.

16. Third, the Authority underlined the importance of reducing the infrastructural gap, especially in the areas of Central and Southern Italy, which usually require the treatment of waste, produced by waste treatment plants, in plants located in Northern Italy or abroad. The AGCM advocated for the introduction of long-term incentives to invest in new and more efficient treatment plants and improve their geographical distribution (to reduce transport costs)¹¹.

17. Several of the proposed reforms have been included by the Government in the National Recovery and Resilience Plan (NRRP), approved in June 2021, with a view of implementing such reforms gradually, by enacting annual laws on competition for the period 2021-2023¹².

3.2. Extended Producer Responsibility and Competition

18. A key contribution to the circular economy comes from a proper functioning of the waste recycling sector, which could stimulate the development of new secondary materials or recycling processes. The Authority has intervened several times in this sector, in particular with respect to the recycling of waste packaging of different materials (e.g.,

¹⁰ For instance, Unirima, the National Union of Recovery and Recycling Paper Companies, publicly supported the position expressed by the Authority with respect to the perimeter of the concessions and the discrimination between public and private operators. See [Unirima press release of May 10, 2021](#).

¹¹ This infrastructural gap prevents adequate competition in the downstream stages of collection, with the result of concentrating excessive market power in the hands of a few existing plants, with a possible increase in municipal waste management costs. In response to this problem, the sector regulator introduced a framework to facilitate the identification of ‘minimum plants’, that is, those plants indispensable to ensure the fulfilment of the entire waste cycle at the proximity of the collection locations, reducing the transfer from the Central and South regions. However, in December 2022 the AGCM intervened with an opinion to the Government to outline the distorted implementation of this new regulation by some Regions, which have chosen minimum plants resulting in the fact that waste previously managed at distant plants at competitive prices were treated by closer plants at regulated tariffs which were higher compared to the previous ones (see opinion no. [AS1875](#)).

¹² In particular, it has been approved a plan to build new recycling and treatment plants to reduce the geographic gap, introduce a new model of governance for plants managed by local authorities and accelerate the administrative procedures for competitive tenders.

plastic, paper), to foster competition in the market for the provision of the Extended Producer Responsibility (EPR) compliance services¹³.

19. The EPR principle, set out in the Italian and EU framework, is an application of the “Polluter Pays” principle, according to which a company that professionally develops, manufactures, processes, treats, sells or imports products should be responsible, also financially, for the management of the waste generating by these products.

20. In its initial phase, Italy’s waste packaging recycling model was based on monopolistic consortia, which recycle waste packaging on behalf of their members (i.e., producers and recycling companies) for a flat fee, the so-called environmental contribution. However, the AGCM enforcement and advocacy actions over the last fifteen years have shown that the consortium model was no longer capable to deliver the environmental objectives set in the legislation, including the promotion of a circular economy. For this reason, the Authority has intervened to eliminate the obstacles to the entry of alternative collection and recycling systems complying with the EPR principle, possibility that is also contemplated by the existing regulatory framework¹⁴.

21. More specifically, the development of alternative recycling systems complying with the EPR principle, the so-called “EPR compliance schemes”, has been severely hindered by three features of the Italian regulatory framework. First, the accreditation process of alternative systems to ensure they meet legal requirements was heavily influenced by the incumbent consortia, thus creating a conflict of interests. Secondly, incumbent consortia had put in place a number of obstructive conducts to compromise the accreditation process and discourage new entry, as shown by the AGCM impressive enforcement records of abuse of dominance provision¹⁵.

22. Finally, the AGCM criticised the use of a flat environmental contribution by incumbent consortia for providing their services, as it was not capable of internalising the environmental costs of using materials which may differ in terms of recyclability; in addition, a flat fee could not provide incentives upstream to invest in more recyclable products or packaging¹⁶.

¹³ For an in-depth description of the AGCM enforcement records in this sector, see section 3 of *OECD Roundtable on Environmental Considerations in Competition Enforcement – Note by Italy*, December 2021. [https://one.oecd.org/document/DAF/COMP/WD\(2021\)49/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2021)49/en/pdf).

¹⁴ Companies can decide to set up their own collection and recycling systems or adhere to alternative EPR compliance schemes if they do not choose to join the national consortia. For more information, see footnote above.

¹⁵ See section 3 of *OECD Roundtable on Environmental Considerations in Competition Enforcement – Note by Italy*, December 2021

¹⁶ The incumbent consortium-based system provided waste recycling services by charging all producers of packaging made from the same material (e.g., plastic) a single fee, the environmental contribution. In this way, a producer of more easily recyclable products pays to the consortium the same environmental contribution compared to a producer of less recyclable products even if the latter products would require higher waste management costs and bear higher environmental costs. In other words, the environmental cost to manufacturers of meeting the EPR obligation currently bears no relation either to the actual environmental impact of the packaging they produce or to the cost to the consortium system of handling it. This implies the disapplication of the “Polluter Pays” principle. The failure to internalise the real environmental cost of waste recycling, which is typically higher in the case of less recyclable packaging, prevents this environmental contribution from having any real impact on the final price of each type of packaging and hence on the competitiveness of manufacturers of packaging. In other words, the environmental contribution borne by firms does not

23. More specifically, turning to antitrust investigations, the Authority has intervened in numerous occasions to ensure that waste management markets, once liberalised, could effectively be contestable, creating a level playing field for all compliance consortia (see Box 1 below).

Box 1. The AGCM's investigations concerning waste management consortia

Case no. I838 – Agreement between purchasers of lead-acid scrap accumulators

In December 2019 the Authority opened proceedings against COBAT and COBAT's shareholders, which were the main purchasers of lead-acid scrap accumulators present on the Italian market, considering that the latter may have coordinated their purchasing behaviour within COBAT's board of directors.

In Italy, producers of lead-acid accumulators for automotive vehicles and industrial appliances are required to adhere to a waste management scheme, which will ensure that the products which have been put on the market are collected once they end their life-cycle. Once collected, scrap batteries undergo a treatment process that generates so-called secondary lead, which is the main input in the production of new lead-acid batteries (primary lead obtained from mining is limited). The sector is thus characterised by the presence of the following players: (i) compliance schemes, which act as intermediaries between recycling companies and scrap collectors; (ii) recycling companies perform the treatment and recovery of scrap batteries (in Italy, recycling companies can purchase scrap batteries only from compliance schemes); (iii) battery manufacturers, who acquire secondary/recycled lead from recycling companies. Some battery manufacturers are vertically integrated with scrap battery collectors or outsource the recycling process to recycling companies under tolling agreements.

Until 2008, in Italy there existed a single collective scheme named COBAT, which was established by law as a consortium participated by companies active at the different level of the production chain (i.e., COBAT was participated not only by battery manufactures but also by all recycling companies present in Italy). In other words, all the main purchasers of scrap batteries present on the Italian market participated to COBAT as shareholders. In 2008, the legislative framework changed, introducing the principle of competition between compliance schemes in the collection of waste, and producers became free to establish individual schemes or set up collective schemes competing with COBAT. However, COBAT's shareholding pattern remained unchanged with all the recycling companies present in Italy remaining part of COBAT.

The Authority commenced a case against COBAT based on a complaint submitted by a competing collective scheme which reported possible exclusionary conduct put in place by COBAT's shareholders within COBAT's board of directors, aimed at foreclosing COBAT's competitors' access to treatment facilities.

In the Authority's view, COBAT's shareholders had set up an agreement within COBAT's board of directors aimed at securing a constant and exclusive supply of all scrap batteries collected by COBAT (approximately 65% of Italy's lead-acid waste) setting the price and quantities of scrap sold to each shareholder and excluding other

provide price signal to consumers as to the greater or lesser environmental impact of the product. As a consequence, there is a softening of competition in the market for the production of packaging, which benefits in particular the producers of less recyclable packaging, who avoid competition based on the production of environmentally friendly goods.

interested players (namely recycling companies established in neighbouring Member States). Second, COBAT's shareholders – which, as mentioned, comprised all recycling companies active in Italy – coordinated their purchasing behaviour also vis-à-vis COBAT's competitors, agreeing to reduce the prices paid to other compliance schemes.

Therefore, the Authority welcomed the recycling companies' commitment to sell their shares held in COBAT, and decided to close the case based on a positive evaluation of this measure considered necessary to remove a structural obstacle to the proper functioning of competition between collective schemes.

Case no. A544 – Abuse of dominance in the recycling of waste electrical and electronic equipment

Another recent enforcement action by the AGCM concerned a key segment of the recycling sector, the collection and treatment of waste electrical and electronic equipment (WEEE). Differently from what seen for the collection of lead-acid batteries, the Italian legislative framework – based on the European WEEE directives – opted since the beginning for a model of competing schemes set up by manufacturers of Electrical and Electronic Equipment (“EEE”) to fulfil their producers' responsibility. Since collective schemes are intermediaries (who collect waste at the municipal level and arrange for its transportation and treatment at recycling facilities), the major costs they bear are typically represented by the fees paid to recycling companies for the treatment of waste.

In this context, the Authority received a complaint by two minor collective schemes which considered that Erion, the dominant consortium with a market share of approximately 70%, imposed a most favoured nation clause upon its contractual counterparts, including almost all recycling companies active in Italy, which depended upon Erion's continuous supply of input. The Authority opened proceedings against Erion considering that such clause could have a potentially adverse on competition between WEEE collective scheme to the extent that it secured preferable pricing conditions for Erion and did not allow competitors to benefit from lower treatment tariffs in case of efficiency generated in their logistics activities. Erion also included an “exclusivity clause” which could deter electronics producers from collaborating with other EPR compliance schemes. Furthermore, Erion introduced environmental contributions at very low levels, which were not considered to be proportionate to the waste-management costs suffered by electronics producers according to the EPR principle. The Authority closed the investigation by accepting and making binding Erion's commitment to eliminate the MFN clause from its contracts with all recycling companies, remove the exclusivity clause and recalibrate the environmental contributions in order to reflect costs.

In addition to the objective of securing lower collection tariffs to the benefit of users, in Erion the Authority has thus also looked at the potential long-term benefits of circular business models in terms of innovation, making sure that competitive players could internalise their efficiencies and maintain their incentives to invest in the long run.

The Authority has intervened in a number of other similar exclusionary conduct in the last few years, against all major market players: in 2022, it has intervened against Polieco, the incumbent consortium for the collection and recycling of polyethylene, in

order to hinder alternative schemes to operate in the same market, in particular the newly established consortium called “Ecopolietilene”¹⁷.

24. The idea behind this stream of cases is that competition between collecting consortia generates incentives to invest and to lower prices, to the benefit of users. In fact, when competition works smoothly, waste holders would end up paying less to have their waste treated, whilst improved waste treatment solutions would benefit the environment. Efficient material recovery would also have the potential to lower prices for products created with secondary materials through lower prices for raw materials.

25. Furthermore, the AGCM enforcement action highlighted how the development of alternative EPR compliance schemes for collection and recycling of waste may foster innovation in exploring solutions that are not only economically efficient but also better performing from an environmental perspective. For instance, in 2015, the AGCM acted against CONAI and CORIPET for a possible abuse of dominant position in the market for the recycling of plastic packaging, for allegedly excluding a company called Aliplast that had put in place an autonomous system of collection which allowed to trace the packaging belonging to its own producers¹⁸. In 2020, the Authority opened a second case against COREPLA for preventing the implementation of an innovative environmental project by an alternative recycling scheme CORIPET, which would have resulted in an increase in the collection and recycling of waste, especially in geographical areas with lower environmental performance¹⁹.

26. The Authority has also recently intervened on the functioning of compliance schemes in the context of an opinion issued to the Ministry for Environment²⁰, regarding a framework agreement concluded by Amazon with two compliance schemes to ensure that all electronic products and lead acid batteries put on the Italian market through Amazon’s marketplace are subject to the applicable collection fees (i.e., to avoid possible free riding by manufacturers established outside the EU). From a competition point of view, the Authority appreciated the fact that the agreement was defined as open to membership by both other compliance schemes and marketplaces other than Amazon, as well as that each individual seller on Amazon was able to opt-out from it, showing that the applicable collection fee had already been paid/the seller adhered to a specific compliance consortium. Therefore, while securing that costs of the recovery chain are equally bore by all polluters in the interest of the waste management system as a whole, the intervention by the AGCM secured that each individual seller or, on his behalf, each online marketplace adhering to the framework agreement would be free to select between a number of competing compliance consortia.

¹⁷ See AGCM case no. [A545 - CONSORZIO POLIECO/CONDOTTE ANTICONCORRENZIALI](#), commitment decision no 30300, published on the AGCM Bulletin no. 35/2022

¹⁸ See AGCM case no. [A476 – CONAI/GESTIONE RIFIUTI DA IMBALLAGGI IN PLASTICA](#), commitment decision no. 25609, published on the AGCM Bulletin no. 33/2015.

¹⁹ See AGCM case no. [A531 - RICICLO IMBALLAGGI PRIMARI/CONDOTTE ABUSIVE COREPLA](#), infringement decision no. 28430, published in the AGCM Bulletin n. 45/2020.

²⁰ Cf. opinion of November 16, 2022, case AS1803, AGCM Bull. 47/2021. In a second opinion (AS1859), at the request of the Ministry for Environment, the Authority analysed a project named «ERION Packaging», concerning a multi-sectoral compliance scheme (paper, plastic and wood) adopted in July 2022.

27. The competition concerns highlighted by the Authority with respect to the promotion of alternative EPR compliance schemes in the waste and recycling sector have been addressed by the Government in its National Strategy for the Circular Economy launched in June 2022²¹. In particular, the Strategy envisages the set-up of an independent entity responsible, in particular, for verifying: the performance of the activities of the various collective schemes and compliance with regulatory obligations and environmental objectives, the congruity of the costs incurred and the correct determination of the environmental contribution and its use. In fulfilling its statutory mission, this independent entity will avail of the cooperation of other institutions, including the AGCM and the sectoral regulator ARERA. The new independent surveillance body has been officially introduced in November 2022 and its board includes representatives from several Ministries and AGCM as well as ARERA²².

4. Consumer protection, legality rating programme and circular economy

28. Empowering consumers and public buyers and providing them with cost-saving opportunities is a key building block of the circular economy and the transition to a greener society. In March 2023, the European Commission adopted a new proposal on EU common rules promoting the repair of goods²³. The ‘right to repair’ proposal, announced in the New Consumer Agenda and the Circular Economy Action Plan, intends to tackle obstacles that discourage consumers to repair due to inconvenience, lack of transparency or difficult access to repair services. It encourages repair as a more sustainable consumption choice, which contributes to the climate and environmental objectives under the European Green Deal²⁴.

29. In this perspective, the AGCM has been a pioneer in establishing consumers' right to repair and ensuring reliable information on the lifespan and the reparability of products, by enforcing its standard consumer protection law.

30. In September 2018, under two separate decisions, the Authority fined Apple²⁵ and Samsung²⁶ for unfair commercial practices concerning software updates which seriously impaired the functioning of certain models of mobile phones²⁷. The two firms were fined EUR 10 and 5 million respectively. In particular, the AGCM ascertained that the two undertakings had carried out misleading and aggressive commercial practices in relation to the release of firmware updates for their mobile phones. These had caused serious malfunctions, significantly reducing their performance and, as a consequence, had

²¹ See section 2.4 of the document [Strategia Nazionale per l'Economia Circolare](#), June 2022.

²² See art. 22 (3) of decree law n. 144 of 23/09/2022, converted into law L. n. 175 of 17 November 2022.

²³ See the [EC press release of March 22, 2023](#).

²⁴ The concept of “durability” has been already introduced by Directive (EU) n. 2019/771 (the so-called “Sales of Goods Directive”), as one of the objective criteria for the assessment of conformity of goods. See Art. 7(1)(d) of the [Directive EU 2019/771](#).

²⁵ See AGCM case no. [PS11039 - APPLE-AGGIORNAMENTO SOFTWARE](#), infringement decision no. 27365, published in the AGCM Bulletin n. 40/2018.

²⁶ See AGCM case no. [PS11009 - SAMSUNG-AGGIORNAMENTO SOFTWARE](#), infringement decision no. 27363, published in the AGCM Bulletin n. 40/2018.

²⁷ See the [English press release of the AGCM](#), dated 24 October 2018.

accelerated their replacement with more recent products²⁸. In January 2023 the Supreme Administrative Court overturned the AGCM decision in the Apple case (which had been upheld in its entirety by the First Instance Court), because that the AGCM failed to prove that the relevant updates had actually produced their contested negative effects on the smartphone models in question. The sentence on the Samsung case is expected in the second half of 2023.

31. Irrespective of the outcome of the judicial review, the Authority's cases anticipated the interest of the EU legislator on product durability for achieving more sustainable consumption patterns and set important principles that remain valid for the future. Moreover, since 2019 the AGCM has adopted a number of consumer protection decisions on generic or misleading green or environmental claims.

32. The AGCM has also implemented a so-called legality rating system that rewards companies for complying with legal standards, including the adoption of processes aimed at ensuring forms of Corporate Social Responsibility, in particular commitments to environmentally sustainable business processes and practices²⁹. This compliance rating system can be used by the rated company to access better credit from banks and public funding and, most of all, can be taken into account by contracting authorities when designing public tenders. Public authorities may indeed attribute additional points to a bidder's offer if the bidder is a company holding the legality rating certification. Therefore, the AGCM has also contributed to promote circularity rewarding compliance rather than only when punishing misconduct.

5. Final remarks

33. The Authority believes that competition policy can strongly support the transition to a circular economy by promoting innovation and creating a level playing field for businesses that are pursuing circular business models. The advocacy and enforcement experience of the AGCM outlined above has shown that traditional competition policy could be used to promote the circular economy, without the emergence of any particular tensions between them. Indeed, while the international debate has focused the attention on how to incorporate considerations about sustainability and circular economy in the competition assessment, the Authority's experience has highlighted that competition agencies can prioritize enforcement and advocacy cases in which the attainment of public interest objectives may also be achieved via a vigorous application of competition law and principles. And that, in the end, promoting competition in circular markets has a positive effect on consumers, in the short and long run, but also generates spillover effects in terms of efficiency of circular business models.

34. There is a clear link between sustainability, efficiency and consumer welfare. Sustainability requires productive and dynamic efficiency to achieve and ensure the optimal level of usage of natural products. The virtuous circle between competition and

²⁸ Additionally, the Authority ascertained that Samsung deliberately decided not to provide assistance for the products, which were no longer under warranty, requiring high costs for repair and not providing the downgrade to the precedent firmware version, thereby intentionally accelerating the products' substitution.

²⁹ See letter d) of Art. 3 of the AGCM implementing regulation. For a more detailed description of the AGCM legality rating system, see section 3 of the AGCM contribution to the OECD Roundtable on Director Disqualification and Bidder Exclusion, November 2022, [https://one.oecd.org/document/DAF/COMP/WD\(2022\)107/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2022)107/en/pdf).

sustainability through circular economy is bound to become all the more important to the extent that sustainability becomes a feature that is valued by consumers and hence used by companies as a competitive driver.

35. However, as the size of the circular economy grows, adjustments to the traditional competition law framework may be required.³⁰ Going forward, competition authorities could consider how to evaluate mergers or cooperation projects in the context of circular business models, or provide guidance on how companies can collaborate on such initiatives without infringing competition laws.

³⁰ See the OECD Background note, and, inter alia, Siderius, T. and T. Zink (2022), *Markets and the Future of the Circular Economy*, Circular Economy Sustain. Aug 24:1-27. doi: 10.1007/s43615-022-00196-4.