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Serial Acquisitions and Industry Roll-ups – Note by Italy

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More documents related to this discussion can be found at
www.oecd.org/competition/serial-acquisitions-and-industry-roll-ups.htm.

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Introduction

1. The Italian business landscape, predominantly consisting of small and medium-sized enterprises, views mergers and acquisitions as vital strategies for strengthening and expanding companies. Serial acquirers play a key role as catalysts for long-term value creation and innovation. Private Equity Funds, as significant financial partners, aid Italian entrepreneurial families in securing growth through external means or internationalization. These funds completed 200 deals worth € 12.1 billion euros in 2021 and 131 deals totalling over € 19 billion in 2022. The Italian M&A market also recorded 1,271 transactions amounting to € 86 billion in the same year.¹

2. Against this background, the Authority also recognizes that serial acquisitions and industry roll-ups can lead to competitive concerns that need careful evaluation. In the course of its experience, the Authority evaluated a wide number of successive acquisitions of control, as well as cases in which several merger transactions and contractual agreements resulted to be interconnected.

3. Serial acquisitions and roll-ups, particularly in sectors like ICT, publishing, periodicals, fuel, and retail food distribution, significantly influenced industry evolution in Italy, both locally and nationally. In some sectors such as pay-TV and the promotion and organization of pop music events in Italy, this type of strategy was deemed a building block of a more complex competitive strategy.

4. The AGCM adopted a practice of conducting in-depth evaluations of such operations, considering the entire spectrum of related contractual relationships to assess associated competition risks accurately. However, due to the incremental nature of these strategies, individual transactions might not reach the relevant merger control notification thresholds, thus avoiding prior examination by competition authorities. While individually these transactions might not seem competitively significant, their cumulative impact over time can increase market concentration and reduce competition significantly.

5. In the past, the AGCM often faced challenges in addressing these issues unless a larger subsequent transaction provided an opportunity for comprehensive scrutiny, including past relationships and acquisitions. The Authority now has some additional tools to deal with such situations, following a recent amendment of the Competition Act (Article 16, paragraph 1-bis, of Law 287/90, introduced by Article 32 of Law No. 118 of August 5, 2022) that allows for call-in of below-threshold transactions.

6. This overview presents the AGCM's experiences in this domain and highlights potential opportunities foreseen by the agency.

1. Sequential acquisition and industry roll ups

7. A significant example of the Authority's approach to examining sequential acquisitions involving Private Equity Firms can be observed in the ICT sector. In both 2018 and 2022, the Authority carried out thorough investigations, which included requesting information from numerous operators in the sector. The main concern in these cases was

¹ KPMG M&A 2022 report, July 2023.

linked to the gradual consolidation over time of a traditionally fragmented sector. This consolidation occurred through a series of minor transactions, with only a select few surpassing the Italian notification thresholds (see Box 1).

Box 1. C12184 Irideos Cloud Italia²

In August 2018, the Italian Competition Authority (AGCM) was notified of Irideos S.p.A.'s acquisition of sole control over Clouditalia Telecommunications S.p.A. (Clouditalia). Irideos, an IT infrastructure services company, was exclusively controlled by an asset management company managing two investment funds specialized in infrastructure: F2i-Secondo Fondo Italiano per le Infrastrutture and F2i-Terzo Fondo per le Infrastrutture. Irideos had previously acquired controlling interests in Infracom Italia S.p.A., MC Link S.p.A. (both notified and authorized simultaneously), KPNQwest Italia S.r.l., and Enter S.r.l., with the last two completed in 2018 without AGCM notification due to below-threshold turnovers. In 2018, Irideos merged with its subsidiaries Infracom, MC Link, and KPNQwest.

Clouditalia, primarily a B2B telecommunications and cloud computing operator, offered services like fixed and mobile telephony, broadband and ultrabroadband data connectivity (copper, fiber optic, wireless, mobile, satellite), and cloud computing. It controlled Acamtel S.r.l. and owned three data centers in Arezzo, Rome, and Milan.

The transaction would result in F2i gaining sole control of Clouditalia and its subsidiaries, allowing Irideos to control a major player in the telecommunications and ICT services markets. This was part of Irideos' growth strategy that began in July 2017 with the acquisition of Infracom, followed by MC-link, KPNQwest, and Enter. Acquiring Clouditalia aimed to enhance Irideos' service coverage throughout Italy.

The transaction impacted the markets for wholesale and retail connectivity provision services over fiber optic networks, and local markets for data center and cloud computing services. Due to the incremental and sequential nature of the sector's consolidation, highlighted by the notification, the AGCM requested additional information to understand the transaction's rationale and assess its impact on local data center and cloud computing markets, considering the cumulative effects of previous acquisitions.

Following the investigation, in November 2018, the AGCM cleared the merger. It concluded that, given the structure of the relevant markets and the parties' positions within them, the transaction was unlikely to establish or strengthen a dominant market position that could significantly and durably reduce competition.

C12476 – Marbles / Irideos³

In August 2022, the Italian Competition Authority (AGCM) received notification about Marbles S.p.A. (Marbles) acquiring sole control of Irideos. Marbles, an indirect subsidiary of the Spanish-law private equity funds Asterion Industrial Infra Fund II, FCR (Fund II) and Asterion Industrial Infra Fund I, FCR (Fund I), managed by Asterion

²[https://www.agcm.it/dotcmsCustom/getDominoAttach?urlStr=192.168.14.10:8080/41256297003874BD/0/43D6AD29EAFAB2D6C12583580050DACC/\\$File/p27414.pdf](https://www.agcm.it/dotcmsCustom/getDominoAttach?urlStr=192.168.14.10:8080/41256297003874BD/0/43D6AD29EAFAB2D6C12583580050DACC/$File/p27414.pdf)

³[https://www.agcm.it/dotcmsCustom/getDominoAttach?urlStr=192.168.14.10:8080/41256297003874BD/0/321EC04B6F1A6B4DC12589160049D7C0/\\$File/p30382.pdf](https://www.agcm.it/dotcmsCustom/getDominoAttach?urlStr=192.168.14.10:8080/41256297003874BD/0/321EC04B6F1A6B4DC12589160049D7C0/$File/p30382.pdf)

Industrial Partners SGEIC S.A. (Asterion), operates in telecommunications, energy, utilities, and mobility sectors. Marbles owned Retelit S.p.A. (Retelit), an Italian company specializing in digital solutions, including data center and cloud computing services, and telecommunications infrastructure.

Given the ongoing consolidation in the markets for data center and cloud computing services, the AGCM decided to extend the merger assessment period and conducted a thorough analysis. This involved addressing information requests to various sector operators to understand the evolution of product and geographic markets.

The investigation revealed significant technological changes since the Irideos/Cloud Italia operation, leading to a redefinition of the geographic market from narrow local areas to broader ones. Moreover, the analysis dispelled competitive concerns. The post-merger entity would hold market shares of 16% and 4.7% nationally. In the overlapping local areas of Milan/Bergamo and Rome, where data centers are concentrated in Italy, the shares would be 17% and 3%, respectively. The market was found to be competitive, with several players including Aruba, Data4, CDLAN, Stack EMEA, TIM, Fastweb, Wind Tre, BT Italia, and large-scale providers like Amazon Web Services, Google, Microsoft, IBM, and Oracle offering scalable cloud solutions.

Consequently, the transaction was authorized in November 2022.

8. In both cases described, the AGCM's Phase I investigation indicated that there was no need to proceed to Phase II. However, these cases are noteworthy for illustrating the AGCM's focus on the role of Private Equity Funds and the gradual consolidation of the sector achieved through sequential small transactions.

9. Additionally, the AGCM imposed fines on two Private Equity firms under Article 19, paragraph 2, of Law No. 287/1990, due to their failure to notify the Authority about a concentration. This pertained specifically to the acquisition of joint control of Centro Computer S.p.A. by Project Informatica S.r.l., which was controlled by the U.S. private equity fund HIG Capital, LLC, and the Luxembourg-based holding company Tempus Holding 79 S.à r.l. While the merger itself did not raise competitive concerns and was subsequently cleared, the involved parties were sanctioned for non-compliance with the notification requirement.⁴

2. Successive acquisition of control and interrelated transactions

10. The Authority scrutinized various interrelated transactions, guided by a broad interpretation of Regulation No. 139/2004 and the European Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on controlling concentrations between undertakings (2008/C 95/01). These cases span different sectors, each treated distinctly based on their unique characteristics and impacts.

11. One notable area is the restructuring in the motor fuel distribution and commercial distribution sectors. The AGCM's case law dictates that acquisitions of control between the same undertakings within a two-year period should be considered as a single concentration, effective on the date of the last transaction. This applies even if the acquisitions do not involve the same industry or business parts. This rule aims to prevent

⁴ C12414B - Project Informatica/Converge.

[https://www.agcm.it/dotcmsCustom/getDominoAttach?urlStr=192.168.14.10:8080/41256297003874BD/0/6D5B8878713569DAC12588600047365A/\\$File/p30169.pdf](https://www.agcm.it/dotcmsCustom/getDominoAttach?urlStr=192.168.14.10:8080/41256297003874BD/0/6D5B8878713569DAC12588600047365A/$File/p30169.pdf)

mergers from escaping the Authority's control by artificially dividing them into smaller transactions, each below the notification thresholds.

12. This principle was applied in the fuel distribution sector when assessing the purchase of a land lease and authorizations for constructing a fuel distribution plant, as well as the purchase of a point of sale, as a single concentration. Both transactions were conducted by the same companies (ENI and API) within the same period.⁵

13. Similarly, in the retail distribution sector, a transaction involving Conad (through a subsidiary) acquiring business branches from Bennet was treated as a single transaction.⁶ This included two business branches acquired in 2021 and a third point of sale acquired later, which collectively exceeded the relevant turnover thresholds, triggering the requirement to notify the whole set of transactions. However, the cumulative effects of these transactions did not raise competitive concerns due to the presence of strong competitors in the local markets.

14. In other sectors, like food distribution⁷ and publishing and periodicals distribution,⁸ the AGCM similarly identified single complex and deferred transactions, assessing their cumulative market effects. For instance, in the C12428 - Arnoldo Mondadori Editore/Dea Planeta – Libromania case, the notification requirement in 2022 stemmed from an interdependence with a previously authorized acquisition in 2021 (C12393 - Arnoldo Mondadori Editore/De Agostini Scuola).

15. Another type of interrelated transaction was observed in the modern commercial distribution sector's transfer of licenses. In 2007, Lidl Italia⁹ and Esselunga executed multiple acquisitions of business branches from different sellers. These acquisitions were evaluated based on their functional connection, as they aimed at opening several stores by merging licenses. Here, the parties involved in the acquisitions within the relevant period were different (see BOX 2).

Box 2. C10363 - ESSELUNGA/21 stores (59 business branches)¹⁰

In November 2009, the Italian Competition Authority (AGCM) received notification of Esselunga S.p.A.'s acquisition of sole control over 59 business branches from various commercial operators, spanning the period from 2004 to 2009. This acquisition,

⁵ C6912 Eni/API's business branch, https://www.agcm.it/dotcmsDOC/relazioni-annuali/Indice_Parte1.pdf

⁶ C12532 - Nordovest Insieme/ Bennet's business branches
[https://www.agcm.it/dotcmsCustom/getDominoAttach?urlStr=192.168.14.10:8080/41256297003874BD/0/AAA823E509967BC3C12589DA0053955D/\\$File/p30656.pdf](https://www.agcm.it/dotcmsCustom/getDominoAttach?urlStr=192.168.14.10:8080/41256297003874BD/0/AAA823E509967BC3C12589DA0053955D/$File/p30656.pdf).

⁷ C12539 and C12555 - Penny Market/Dico company branches.
[https://www.agcm.it/dotcmsCustom/getDominoAttach?urlStr=192.168.14.10:8080/41256297003874BD/0/AE2AD933CC4E0F4AC1258A1200325A10/\\$File/p30758.pdf](https://www.agcm.it/dotcmsCustom/getDominoAttach?urlStr=192.168.14.10:8080/41256297003874BD/0/AE2AD933CC4E0F4AC1258A1200325A10/$File/p30758.pdf)

⁸ C12428 - Arnoldo Mondadori editore/Dea Planeta – Libromania.
[https://www.agcm.it/dotcmsCustom/getDominoAttach?urlStr=192.168.14.10:8080/41256297003874BD/0/3E48C9776E648CAFC1258805004D94DD/\\$File/p30041.pdf](https://www.agcm.it/dotcmsCustom/getDominoAttach?urlStr=192.168.14.10:8080/41256297003874BD/0/3E48C9776E648CAFC1258805004D94DD/$File/p30041.pdf)

⁹ C8643 Lidl Italia /business branches. <https://www.agcm.it/pubblicazioni/bollettino-settimanale/2007/31/alias-3232>

¹⁰ <https://www.agcm.it/pubblicazioni/bollettino-settimanale/2010/14/alias-4734>

involving related commercial authorizations, aimed to facilitate the expansion or opening of 21 Esselunga stores through the acquisition of licenses.

The AGCM noted that it is feasible to treat multiple transactions as a single concentration if they exhibit functional interdependence. In this specific case, the Authority identified a subset of transactions demonstrating this interdependence, either through “expressed mutual conditionality” or a “de facto conditionality” that necessitated an extensive economic evaluation.

In April 2010, the AGCM authorized the acquisition after determining that it did not pose any competitive concerns. However, Esselunga was penalized for the delayed communication of a number of these acquisitions. This case illustrates the AGCM’s nuanced approach to assessing transactions that, while separate in nature, are functionally interconnected and collectively impact market competition.

3. How to restore the market conditions prevailing prior to the implementation of serial and complex operations?

16. The Authority addressed serial and complex operations that were part of broader strategies already implemented, notably in the TV sector and in the promotion and organization of pop music events in Italy. In these cases, since the effects of the complex operations had already materialized, the central challenge for the AGCM was determining how to restore the market conditions that existed before the implementation of the strategies in question.

17. A key case in this context was the merger between Sky Italia and R2, which occurred between 2018 and 2019. The acquisition of R2 by Sky Italia represented a notifiable component of a larger, more intricate transaction, which comprised several interconnected agreements that began affecting the market months earlier. It culminated in a series of steps that ultimately led Sky Italia to gain control over all of Mediaset Premium’s activities.

18. This case illustrates the AGCM’s approach to handling mergers and acquisitions that are not just isolated transactions but part of a larger, strategic manoeuvre. The focus in such situations is not only on evaluating the individual transactions but also on understanding and addressing their collective impact on the market and competition (see BOX 3).

Box 3. C12207 - SKY ITALIA/R2¹¹

In May 2019, the Italian Competition Authority conditionally authorized a merger involving the acquisition by Sky Italian Holding S.p.A. (Sky Group) of some digital terrestrial pay-TV assets of Mediaset Premium S.p.A. (Mediaset Group), specifically the technological platform of R2 S.r.l, the broadcasting branch (Mediaset Premium's digital terrestrial pay-TV channels), and LCN 301-399 numbering.

In March 2018, Sky and Mediaset signed a comprehensive set of commercial agreements related to the R2 sale. These included: i) a transitional agreement for

¹¹ <https://www.agcm.it/pubblicazioni/bollettino-settimanale/2022/14/Bollettino-14-2022>

distribution services, particularly technological platform services from Mediaset Premium/R2 to Sky, and broadcasting of television channels through Mediaset's transmission capacity; ii) licensing of Mediaset Premium's pay-TV channels (Cinema and Series TV), along with an exclusivity option for digital terrestrial broadcasting; iii) an option to purchase R2 (Mediaset Premium's 'operation pay' business unit); iv) sale of numbers (LCN) held by Mediaset Premium and management contracts for these numbers. These agreements, executed between March 2018 and early 2019, had different implementation dates from the final R2 acquisition in November 2018. Only the R2 sale option, executed in November 2018, was notifiable; the other contracts did not meet the notification thresholds.

The transaction impacted several national markets, notably the pay-TV market. The Authority initiated a Phase II investigation following the notification of the acquisition of R2, suspecting it could strengthen Sky Group's dominant position in the pay-TV market, substantially and durably reducing competition in this and related markets, like the wholesale supply of pre-packaged pay-TV channels.

Subsequently, Sky announced it would return R2 to Mediaset and not acquire the LCN numbering (channels 301-399). However, as R2's restitution did not restore the original market conditions and the transaction had already produced its effects on the relevant markets, the Authority proceeded to evaluate the transaction's possible anticompetitive effects. It found that the transaction had significantly reduced the competitive pressure formerly exerted by Mediaset Premium. Consequently, for three years, it imposed measures to restore competition in the pay-TV market: 1) prohibiting Sky Group from entering exclusivity agreements for audiovisual content and linear channels for Internet platforms in Italy, and 2) obligating Sky, if it developed a DTT pay-TV platform compatible with R2, to grant access to third-party operators on fair, reasonable, non-discriminatory, and cost-oriented terms. The AGCM assessed the transaction as a complex operation based on these interconnected agreements, considering the incentives and contractual links as a single concentration operation.

19. Evaluating each contract of this complex transaction independently would have underestimated its cumulative impact. Specifically, the structure of the transaction stemmed from a deliberate contractual choice by the parties involved and, in essence, led to the same restrictive effects on competition as Mediaset Premium had been acquired in its entirety. This resulted in the significant reduction of competitive pressure by Mediaset group on the pay-TV market.

20. In line with the European Commission's Consolidated Notice (2008/c 95/01), the Authority viewed the subsequent transactions as components of a single one. This perspective was upheld judicially, as the Council of State confirmed the conclusions of the first instance Court, TAR Lazio. TAR Lazio ruled that "*the analysis in the decision is perfectly compliant with the provisions of the European Commission's Consolidated Notice (2008/C 95/01), which stipulates that two or more transactions constitute a single concentration.*"¹²

21. Significantly, Article 18(3) of Law No. 287/90 empowers the Authority to impose remedies on a consummated merger to re-establish pre-merger competition conditions. This provision is key in identifying solutions during the ex-post evaluation of a merger that already produced market effects. The measures imposed by the Authority on Sky Italia, overseen by an independent trustee, were crucial in restoring competitive conditions in the

¹² Council of State, n. 05173/2020.

pay-TV market. They enabled new entrants to acquire content for their Over-The-Top (OTT) offerings, thus fostering a more competitive environment.

4. How to cope with serial below-threshold acquisitions?

4.1. Below below-threshold acquisitions in digital markets and Article 22 Regulation n.139/2004

22. The external growth strategies employed by Big Tech companies in digital markets are characterized by rapid development and often involve acquisitions of target operators that do not meet the relevant notification thresholds. Traditionally, mergers involving smaller firms were overlooked as they were deemed unlikely to significantly impact competition. However, there has been a shift in attention to such transactions, especially in cases where the target company, despite having minimal or no turnover, could play a crucial role in future competitive dynamics.

23. This shift is highlighted by the revised interpretation of Article 22 of the EU Merger Regulation, as published on March 31, 2021. This revision encourages Member States to refer mergers to the European Commission even when the mergers fall below the turnover thresholds of the requesting country, thus not under its jurisdiction. This approach was recently upheld by the General Court judgment T-227/21 in *Illumina v European Commission*.

24. In response to these developments, the Authority has been particularly vigilant, actively contributing to the referral of several transactions. This reflects a growing awareness and adaptability to the evolving nature of mergers and acquisitions in the digital economy, particularly those involving powerful tech companies and smaller, potentially influential players in the market.¹³

4.2. Serial acquisitions and ex-post application of Article 102 TFUE

25. An additional approach to addressing the issue of serial acquisitions involves the potential ex-post application of Article 102 TFEU for assessing acquisitions that initially eluded ex-ante scrutiny. The Court of Justice's *Towercast* judgment on March 16, 2023, addressed the admissibility of ex-post assessment under Article 102 TFEU by EU Member States' competition authorities. This assessment applies to non-EU merger transactions that, being below the notification threshold, escaped ex-ante control by a Member State and were not referred to the European Commission.

26. The Authority had already utilized this tool in 2020. It considered four acquisitions of live music promoters as part of a complex exclusionary strategy designed to foreclose competing upstream ticket sellers. These acquisitions were not notified due to falling below the notification threshold.

27. As a result of the proceedings, the Authority imposed remedies to mitigate the exclusionary effects associated with the strategy. These remedies aimed to enable competitors to access upstream ticketing services and restore the competitive situation

¹³See among others, M10262 *Meta /Kostumer* (2021) https://ec.europa.eu/commission/presscorner/detail/en/ip_21_4021) and most recently *Qualcomm/Autotalks* (2023) https://ec.europa.eu/commission/presscorner/detail/en/mex_23_4201).

existing before the implementation of the exclusionary strategy, of which the serial below-threshold acquisitions were deemed an integral part.

28. While the Administrative Court of first instance TAR Lazio initially deemed the ex-post assessment of merger transactions by the Authority impermissible, the Council of State later ruled that a series of concentrations could constitute an abuse of a dominant position. This ruling aligns with the Court of Justice's jurisprudence, establishing that concentrations not subject to notification under national law may still be evaluated using standard antitrust instruments, though prior examination is preferred.

29. Thus, Article 102 TFEU serves as an additional safeguard, applicable where conditions for establishing an abuse of dominant position are met.¹⁴

4.3. Serial acquisitions and sector inquiries

30. Sector inquiries represent a relevant tool to monitor competition features and developments of key economic sectors. They also allow to detect consolidation processes taking place in domestic markets.

31. In January 2023, the AGCM introduced a new organizational structure, which also include a specialised Directorate for Sector Inquiries.

4.4. Below-threshold acquisitions: the new Italian call-in provisions

32. The Authority was recently granted some additional tools to deal with serial acquisitions and consolidation processes.

33. On the procedural side, Law No. 118/2022 strengthened the Authority's investigative toolkit by extending its power to apply the monetary sanctions envisaged for formal investigations in case of failure to cooperate with the AGCM following requests for information sent outside formal proceedings. Under the previous regime, the Authority could only rely on the voluntary cooperation of interested parties. The extension applies to requests for information or documents for the purposes of the application of the national and EU rules on anticompetitive agreements and abuses of dominant position, as well as for the control of concentrations.

34. Furthermore, a recent provision (Article 32 of Law no. 118, dated August 5, 2022) amended the Italian Competition Act (new Article 16, paragraph 1-bis, of Law no. 287/90) and empowered the Italian Competition Authority to call in merger transactions that fall below the notification thresholds (see BOX 5).

¹⁴ In particular, the Court of Justice affirmed that "*it is for the Authority to which the case is submitted to verify that the acquirer who is dominant in a given market and has acquired control of another undertaking in that market has, by that conduct, substantially hindered competition in that market. In this regard, it is not sufficient to find that an undertaking's position has been strengthened in order to establish that there has been an abuse, since it must be shown that the degree of dominance thus achieved substantially hinders competition (cf, in this sense, Case 6/72 Europemballage and Continental Can v. European Commission, EU:C:1973:22, para. 26, and Case C-36/00 Compagnie Maritime Belge Transports and others v. European Commission, C-36/00 Compagnie Maritime Belge Transports and others v. European Commission, para. 26). a./European Commission, C-395/96 P and C-396/96 P, EU.*"

Box 4. Italian call-in provisions

Article 32 of Law No. 118/2022 revised Article 16 of the Italian Competition Act by adding a new paragraph (1-bis), establishing a review regime for transactions below the applicable thresholds. The Authority can call for a notification of a concentration within 30 days when: i) there are prima facie tangible risks to competition in the Italian market (or a significant part of it), also considering potential negative impacts on the growth and spread of small innovative enterprises; ii) the transaction occurred no more than 6 months before the notification order; iii) the transaction meets one of two cumulative filing thresholds set forth by Italian law, or the global turnover of the concerned undertakings exceeds EUR 5 billion.

Not notifying within the specified timeframe after the Authority's request results in financial penalties under Article 19 of the Competition Act, with fines up to 1% of the last consolidated financial statement's turnover of the involved entities.

In December 2022, the Authority issued a notice regarding the notification of below-threshold merger transactions. This notice outlines procedural aspects of the new regime and clarifies some hypotheses of "concrete risks for competition in the market".

In assessing "concrete risks for competition," the Authority will consider factors like market structure, characteristics of the operators, and revenues achieved in Italy. When turnover data are unavailable or unrepresentative of a firm's current or potential competitive impact, the Authority may consider other factors, such as if a firm is: 1. a significant startup or new entrant; 2. a major innovator or engaged in crucial research; 3. a significant current or potential competitive force; 4. has access to essential assets (e.g., raw materials, infrastructure, data, intellectual property rights); or 5. provides key inputs for other industries.

The transaction's value, especially if high with respect to the acquired firm's turnover, is also a factor. If none of the involved entities generated turnover in Italy, the Authority will assess the likelihood of the concentration impacting national competition, considering aspects like: a) the prevalence of the involved entities' activities among Italian users, even if their services are provided for free; b) the location of the company's headquarters, production facilities, or research labs in Italy; c) the performance of nationally relevant R&D activities, such as marketable outcomes or owning/approving patents for nationally distributable drugs; and d) plans to enter the Italian market, evidenced by steps like opening production facilities or recruitment.

The parties can voluntarily inform the AGCM if there is uncertainty about meeting the requirements of paragraph 1-bis of Article 16. Upon voluntary communication, the Authority undertook to inform the parties within 60 days whether to request formal notification of the transaction based on the information provided.

35. To ensure effective implementation of this additional power, the Authority has engaged in vigilant monitoring of market developments and reports. In particular, the Authority is examining various databases to gain a comprehensive, up-to-date perspective of merger activities occurring or potentially having effects in Italy.

36. Whenever there are concerns about the potential effects of transactions, either from its own monitoring or third-party complaints, the Authority issues requests for information. To date, the Authority requested the notification of two below-thresholds transactions and others are under scrutiny across different markets.

4.5. International cooperation

37. An important source for information on below-threshold mergers and acquisitions (M&As) is the European Competition Network (ECN). The ECN Merger Group, through its regular meetings, provides Member States with constant updates on mergers that have cross-border significance. This network is a valuable tool for keeping abreast of developments that might impact multiple jurisdictions.

38. Also beyond the EU borders, enhanced international coordination among competition authorities can significantly improve the effectiveness of monitoring and regulating serial acquisitions. These acquisitions are often carried out by Private Equity firms with extensive interests that cross national boundaries. By sharing information and strategies, authorities can better understand the broader implications of such transactions and develop more effective responses. This collaborative approach is especially crucial in dealing with complex, international M&A activities that might otherwise evade individual national regulations due to their global nature.

5. Conclusions

39. The Authority is aware of possible competitive concerns raised by serial acquisitions and industry roll-ups, which have manifested across various sectors, including ICT, publishing, periodicals distribution, fuel distribution, and retail food distribution, both locally and nationally.

40. The AGCM's approach involves a comprehensive evaluation of these transactions, extending beyond the individual analysis of each of them. This method considers the entire array of related contractual relationships to accurately assess the overall impact on competition.

41. A significant challenge in addressing this phenomenon is that individual transactions often do not reach the relevant notification thresholds, thereby escaping the scrutiny of Competition Authorities. The AGCM frequently overcomes this by evaluating subsequent transactions, which provide an opportunity to consider previous contractual relationships and acquisitions. In markets like Pay-TV and the organization of pop music events, serial mergers were often part of a broader strategy already in effect, necessitating measures to restore pre-strategy market conditions.

42. To tackle serial acquisitions below merger control thresholds, the AGCM employed a variety of tools. It broadly interpreted the European Commission's Consolidated Notice (2008/c 95/01), treating related transactions as parts of a single one, a view supported by Italian Administrative Courts. It also closely follows the referral provisions of Article 22 of Regulation 139/2004 and applies Article 102 TFEU ex-post to mergers considered part of an exclusionary strategy.

43. Additionally, a recent amendment in Italian Competition legislation empowers the AGCM to call in below-threshold transactions.

44. Furthermore, the AGCM would like to emphasize the importance of sharing experiences and information among international competition authorities. This collaborative approach is particularly relevant in light of the nature of serial acquisitions, which are often conducted by Private Equity firms and digital operators with broad interests across various products, services, and geographic markets. Such cooperation is essential for maintaining competitive fairness and market health in an increasingly interconnected global economy. Opportunities for experience sharing and joint reflection among

competition authorities like the OECD Roundtable on Serial Acquisitions and Industry Roll-ups are extremely useful and most welcome.