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**Competition and Consumer Policy in Digital Markets – Note by Italy**

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### 1. Introduction

1. This contribution examines the interaction between competition law enforcement and consumer protection in digital markets, with particular reference to the decisional practice of the Italian Competition Authority (Autorità Garante della Concorrenza e del Mercato — AGCM). Its aim is to illustrate how, in these markets, the two disciplines are converging to an increasing degree, making an integrated and synergistic enforcement approach not only necessary, but institutionally feasible.

2. Digital markets present structural characteristics that progressively blur the boundaries between competition and consumer protection. Practices linked to the control of digital ecosystems — including the governance of access infrastructures, the large-scale collection and processing of data, and the design of interfaces, algorithms and recommender systems — produce effects that manifest themselves in an intertwined manner, simultaneously affecting the competitive structure of the market and the decision-making processes of users. In this environment, the consumer is not simply the ultimate beneficiary of protection, but an active component of competitive dynamics, whose freedom of choice and informational awareness are themselves preconditions for the proper functioning of competition.

3. The AGCM's enforcement experience, illustrated through an extensive review of proceedings conducted under either its antitrust or consumer protection powers, clearly reflects this progressive convergence. On the antitrust side, cases concerning access restrictions, self-preferencing, interoperability barriers, data portability and the competitive implications of consent architectures show how control over platforms, APIs, data and interfaces simultaneously generates exclusionary effects on the supply side and conditioning effects on the demand side — with lock-in and ecosystem dependence emerging as the behavioural reflection of supply-side control. On the consumer protection side, proceedings addressing dark patterns, misleading defaults, frictions in exit pathways, engagement algorithms, opaque data monetisation and distorted reputational signals reveal practices whose effects extend well beyond individual consumer harm, feeding into competitive dynamics by increasing switching costs, strengthening lock-in and reducing market contestability.

4. Across both enforcement streams, a common underlying phenomenon emerges: the mechanisms through which market power is built, maintained and extended in digital markets increasingly coincide with the mechanisms through which user behaviour is shaped, steered and exploited. When information asymmetries, behavioural exploitation techniques and manipulative choice architectures are used by large platforms, they do not merely harm individual consumers but can also contribute to consolidating the market power of dominant platforms, reinforcing network effects and reducing the contestability of digital markets.

5. This convergence is further intensified by the growing role of algorithms, artificial intelligence and profiling systems, which the Authority has addressed through both its antitrust and consumer protection tools. AI-powered tools, recommender systems and personalisation mechanisms operate simultaneously as competitive levers, factors of ecosystem reinforcement, engagement tools and potential channels for informational and behavioural manipulation — raising novel and interrelated enforcement challenges that cannot be adequately addressed through the lens of either discipline alone.

6. A central feature of the analysis presented in this contribution is the dual competence of the AGCM in competition and consumer protection matters. This institutional framework — distinctive among national authorities — does not represent a mere accumulation of enforcement instruments, but rather a multi-layered system grounded in principles of coordination, complementarity and proportionality. The Authority is able to select, depending on the nature of the conduct, the effects produced and the type of harm identified, the most appropriate tool — or to deploy both concurrently, where the same conduct simultaneously produces anticompetitive effects and distorts consumers' freedom of choice. National administrative case-law has progressively confirmed that the two regimes pursue autonomous yet potentially interrelated objectives and may apply concurrently where the same conduct affects both the proper functioning of the competitive process and consumers' ability to make informed and autonomous economic decisions. This approach proves particularly well-suited to digital markets, where algorithms, data, interfaces and reputational systems simultaneously affect the competitive process and user behaviour in ways that resist neat analytical compartmentalisation.

7. The synergies enabled by this dual competence are not merely theoretical. They are supported by concrete organisational and functional arrangements, including structured internal coordination mechanisms, periodic case allocation procedures, interdepartmental information sharing and a dedicated data analytics function. These mechanisms allow for the timely identification of practices that present both competition and consumer protection dimensions, facilitate the selection of the most effective and proportionate enforcement tool, and reduce the risk of fragmented or inconsistent intervention. The cross-fertilisation of expertise between the Authority's competition and consumer protection divisions also promotes greater consistency in administrative action and enhances the Authority's capacity to adapt to technological change and new forms of digital interaction.

8. This contribution is structured as follows. Following this introduction, the first substantive section maps the main areas of convergence between competition and consumer protection that emerge from the Authority's enforcement experience in digital markets. Subsequent sections analyse in turn the proceedings relating to ecosystem control and exclusionary conduct, consent governance and data transparency, behavioural exploitation techniques and informational vulnerabilities, and the growing role of algorithms, AI and profiling. The contribution concludes with an analysis of the legal and institutional framework underpinning the AGCM's dual competence, and with reflections on the evolution of the enforcement model in digital markets, also in light of recent developments in the European regulatory framework and in international enforcement cooperation.

## 2. Digital markets: enforcement experience and areas of convergence

9. Practices linked to ecosystem strategies — such as control over the conditions for access to and use of digital infrastructures, the extensive collection and processing of data, and platform design through interfaces, algorithms, recommender systems, choice architectures, personalisation and other personalised persuasion techniques — may affect both the competitive structure of the market and users' economic behaviour.

10. By shaping users' decision-making processes, often in subtle and opaque ways that may go beyond users' awareness or ability to resist, such practices may restrict consumers' freedom of choice and other consumer rights, reinforce lock-in effects and consolidate closed digital ecosystems. At the same time, they may contribute to strengthening the market power of platforms, particularly where such power is based on privileged access to data, network effects and the ability to control channels of interaction with users. In this

context, informational asymmetries are further amplified by the extensive collection and processing of consumer data, enabling firms to tailor commercial practices to individual vulnerabilities and behavioural biases.

11. Against this background, competition and consumer distortions increasingly tend to reinforce one another because these effects manifest themselves in an intertwined manner.

## 2.1. Competition issues relating to dominant platforms

12. A common thread emerging from the antitrust cases investigated by the Authority concerns the fact that control over platforms, operating systems, APIs, marketplaces, datasets, algorithms and interfaces generates exclusionary effects on the supply side and dependency and conditioning effects on the demand side. The digital ecosystem constitutes not only a competitive infrastructure, but also a choice architecture through which user experience, the visibility of available options, access to services and switching possibilities are organised. Control over the ecosystem therefore enables dominant operators to influence market access conditions for competitors, while also indirectly affecting users' decision-making processes.

13. In particular, the Authority has conducted a number of antitrust proceedings concerning restrictions on access and interoperability, self-preferencing practices, discriminatory conditions and control over strategic data, which were capable of strengthening the dominant operator's market power and affecting competitors' ability to compete. At the same time, such conduct may increase users' dependence on the relevant digital ecosystem, limiting their ability to use competing services, compare alternatives, engage in multi-homing or migrate towards alternative ecosystems. From this perspective, demand-side lock-in represents the behavioural reflection of control exercised on the supply side.

14. This dynamic clearly emerges in the following antitrust cases: Google Android Auto, Amazon Logistics, Google/Hoda, Meta/WhatsApp AI and Meta/SIAE.

15. In the Google Android Auto (Enel X / JuicePass)<sup>1</sup> case, the Authority found that Google had failed to ensure interoperability between the JuicePass app and the Android Auto system, thereby preventing Enel X from making its electric vehicle charging application available within the Android Auto ecosystem. According to the Authority, such refusal was capable of restricting competition in downstream markets for electric vehicle charging services integrated with navigation and in-car functionalities and hindering the development of innovative services and limiting consumers' ability to access and use competing applications under equivalent conditions within the Android ecosystem.

16. In the Amazon Logistics<sup>2</sup> case, the Authority found that Amazon favoured, within its marketplace, sellers using the "Fulfilment by Amazon" (FBA) logistics service by granting them significant advantages in terms of visibility and access to essential services,

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<sup>1</sup> See Case A529 – Google/Compatibility of the Enel X Italia App with the Android Auto system, infringement decision No. 29645 of 27 April 2021, published in AGCM Bulletin No. 20/2021. The Council of State upheld the Authority's decision (see judgment of 29 October 2025, No. 8398). The Court of Justice of the European Union had already ruled on exclusionary abuses in digital markets (Case C-233/23, Alphabet Inc. and Others v Autorità Garante della Concorrenza e del Mercato, ECLI:EU:C:2025:110).

<sup>2</sup> See Case A528 – FBA Amazon, infringement decision No. 29925, published in Bulletin No. 49/2021.

including the Prime badge and participation in promotional events. The conduct was considered capable of strengthening Amazon's dominant position in e-commerce logistics services and of hindering competing operators, while at the same time affecting conditions of access to the marketplace for third-party sellers and, indirectly, the variety and quality of the offer available to consumers.

## 2.2. Consent architecture, data portability and opacity in data use

17. A second common thread concerns the ways in which consent is obtained and the interfaces through which users are prompted to share data or accept specific terms of use, as well as transparency regarding the use and monetisation of personal data. In digital markets, transparency concerning the collection, use and combination of data may affect not only users' ability to make informed choices, but also competitive dynamics, reflecting the dual nature of data as both a source of competitive advantage and a means of influencing user behaviour. In this respect, interventions aimed at reducing information asymmetries contribute to making digital business models more comparable and to limiting opaque data accumulation as a source of market power. It is precisely in this area that the link between transparency, data accumulation and the cumulative competitive advantage of digital platforms emerges most clearly.

18. Alongside antitrust cases such as Apple ATT, Google Hoda and Meta / SIAE, the Authority has pursued consumer protection proceedings including Meta/Facebook, Pinterest, LinkedIn and Google – consent for service linking.

19. Having regard rules governing access to data, the Authority has dealt with several cases showing how, in data-driven markets, control over such inputs may result in restrictions on market contestability while simultaneously contributing to the strengthening of lock-in dynamics on the demand side.

20. In the Apple App Tracking Transparency (ATT)<sup>3</sup> antitrust case, the Authority examined the way in which Apple introduced its user tracking consent framework, finding that the conditions imposed on third-party developers could give rise to exploitative effects in digital advertising and app distribution markets.<sup>4</sup> According to the Authority's assessment, the consent architecture and technical conditions introduced by Apple were liable to affect third-party operators more heavily than Apple's own services, potentially resulting in exploitative effects linked to the use of data and user tracking functionalities within the ecosystem. Specifically, the Authority found that under the ATT framework introduced in 2021, third-party developers were required to obtain additional consent from users for tracking and profiling activities for advertising purposes through Apple's ATT prompt. According to the Authority, the way in which the ATT policy was implemented resulted in a disproportionate and restrictive double consent request, capable of limiting the collection, linking and use of user data that constitute a key input for personalised advertising services. The Authority considered that such conditions were liable to harm third-party developers, advertisers and advertising intermediation platforms operating within the iOS ecosystem, thereby producing restrictive effects on competition. The case illustrates how consent architectures, tracking restrictions and privacy-related interface mechanisms may affect competitive conditions in digital ecosystems where access to user

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<sup>3</sup> See Case A561 – Apple App Tracking Transparency, infringement decision and cease-and-desist order No. 31772, published in Bulletin No. 49/2025.

<sup>4</sup> The Apple App Tracking Transparency (ATT) case concerned the privacy rules unilaterally imposed by Apple in 2021 on third-party developers distributing apps through the App Store.

data constitutes an important competitive parameter.<sup>5</sup> At the same time, it highlights the behavioural dimension of such mechanisms, insofar as consent requests and interface design may influence user choices, interactions and engagement within the ecosystem.

21. In the Google/Hoda<sup>6</sup> case, the Authority examined conduct potentially capable of hindering interoperability and portability of data held within the Google ecosystem towards third-party operators.<sup>7</sup> The case was ultimately closed with commitments aimed at facilitating the exercise of users' data portability rights and improving interoperability mechanisms within the ecosystem. In the Authority's view, data portability — where effectively exercisable and supported by interoperable technical solutions — may enable users to make broader and alternative use of their personal data beyond the services offered by the dominant platform, thereby reducing dependence on a single ecosystem and fostering data-driven competition.

22. Likewise, in the Meta/SIAE<sup>8</sup> case, the Authority examined the suspension of negotiations for the renewal of licences relating to the use of musical content, alleging a possible abuse of economic dependence. The case confirms that, in digital markets, the availability and sharing of important information — including data on revenues generated through the use of content — may affect the bargaining positions between operators. From this perspective, transparency and informational symmetry in B2B relationships may contribute to reducing bargaining imbalances and fostering competitive conditions.

23. At the same time, the Authority has analysed the use of behavioural biases and consent architecture as tools capable of strengthening the market power of digital platforms. The consumer protection investigations show that ways in which users are informed, guided or induced to share data have a direct bearing on competition, insofar as consent and choice architecture increasingly form part of the competitive strategies of digital platforms.

24. The Google case on consent for service linking<sup>9</sup>, conducted under consumer protection rules, clearly illustrate the growing overlap between the consumer and competition dimensions, insofar as consent design simultaneously affects users' freedom of choice and the accumulation of data as a source of competitive advantage. The Authority closed the proceedings with commitments, obtaining from Google more detailed and rigorous information regarding the combined and cross-service use of personal data originating from different services.<sup>10</sup> Google's commitments also reflected a strict

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<sup>5</sup> The investigation was also conducted in coordination with the European Commission, other national competition authorities within the ECN, and the Italian Data Protection Authority. See press release at: <https://en.agcm.it/en/media/press-releases/2025/12/A561>.

<sup>6</sup> See Case A552 – Google/Obstacles to Data Portability, commitment decision No. 30736, published in Bulletin No. 29/2023.

<sup>7</sup> The commitments included, inter alia, a “preferential channel” (so-called early adopter channel) enabling developers/third parties to access tools/APIs earlier or more easily, test their integrations and request access to users' data, together with a set of measures aimed at simplifying data extraction and acquisition. By acting on interoperability, portability and access to essential inputs (data), the commitments effectively make portability operational and address the competition concerns relating to data foreclosure and ecosystem leveraging.

<sup>8</sup> See Case A559 – Meta/SIAE, commitment decision No. 31537, published in Bulletin No. 18/2025.

<sup>9</sup> See Case PS12714 – Google/Consent for Service Linking, commitment decision No. 31720, published in Bulletin No. 45/2025.

<sup>10</sup> Specifically, in the Google proceedings concerning service linking, the Authority intervened to ensure that consent requests were presented in a clear and non-conditioning manner, avoiding

cooperation between the AGCM and the European Commission as some of the issues are of interest under the Digital Markets Act, including cross-service data combination, consent mechanisms and the role of data accumulation in reinforcing platform market power. The Authority's intervention therefore directly concerned both the quality and the effective freedom of user consent, while at the same time affecting conditions for data accumulation within the digital ecosystem.

25. In digital markets characterised by zero-monetary-price business models, information regarding the economic purposes underlying data processing constitutes an essential precondition for users to make informed economic decisions. The Meta – Instagram and Facebook<sup>11</sup> case concerning account issues represents a particularly significant example in this respect. When creating an Instagram account, users were not immediately informed of the remunerative use of their data and of the central role that such data played in the platform's business model. The Authority therefore fined Meta for misleading commercial practices relating to the creation and management of Facebook and Instagram accounts. The relevance of the case does not lie solely in its informational dimension: the lack of clarity regarding the economic value of the data collected also affects users' ability to compare services that appear to be free of charge, but are in fact based on different levels of personal data exploitation.

26. A similar rationale underlies the Meta, Pinterest and LinkedIn proceedings, all of which concerned the transparency of platforms' business models and, in particular, the commercial value and use of users' personal data. In these cases, the Authority examined whether users were adequately informed, already at the account-creation stage, that the services were financed through the collection and processing of personal data for personalised advertising and profiling purposes. In the Pinterest case<sup>12</sup>, concerning the initial moment of users' first interaction with the platform, Pinterest undertook to include, from the very first registration page, a clearly visible statement informing users that their data would be used for personalised advertising purposes financing the service, and to ensure adequate prominence of such information across all registration channels in Italy.<sup>13</sup>

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mechanisms capable of unduly steering users' choices. This practice concerning consent flows and digital interfaces is now reflected in the provisions under Article 59-undecies of the Consumer Code, in the section on "distance marketing of consumer financial services" protecting consumers from dark patterns. The provision prohibits forms of undue pressure on users, such as repeated solicitations or persistent pop-ups that interfere with the browsing experience and distort the decision-making process.

<sup>11</sup> See Case PS12566 – Meta/Instagram and Facebook Account Issues, infringement decision No. 31214, published in Bulletin No. 23/2024.

<sup>12</sup> See Case PS12831 – Pinterest/Information Provided at Registration Stage, commitment decision No. 31713, published in Bulletin No. 44/2025.

<sup>13</sup> Pinterest's commitments are behavioural in nature and are aimed at making the registration process clearer and more informed. In particular, the company committed to improving the clarity of the information provided to users by revising the presentation of its terms of use, privacy policies and data-use practices, and by avoiding ambiguous or overly concise wording that could induce users to accept the service without full awareness of its implications; improving the comprehensibility of choices by revising the graphic layout, screen structure and consent mechanisms, with the aim of avoiding consent being "absorbed" into a single insufficiently transparent step; making commercial purposes more explicit, by clarifying the use of data for advertising purposes and content personalisation, so as to enable users to understand that the service is also based on profiling and advertising logic; and reducing potentially misleading elements by

27. Likewise, in the LinkedIn case<sup>14</sup>, the Authority focused not only on the formal completeness of the information provided to users upon registration, but also on its ability to effectively convey the economic logic of the platform and the role played by data processing within the service. Taken together, these cases show that transparency regarding the commercial exploitation of personal data is not merely a formal disclosure obligation, but concerns an essential element of the economic relationship between platforms and users. They also illustrate how users' economic decisions are shaped from the very moment they enter a digital ecosystem, where the acceptance of the service simultaneously entails acceptance of the platform's data-driven business model. From this perspective, transparency over data use and monetisation may directly affect users' autonomy and awareness, while indirectly influencing competitive dynamics in digital markets.<sup>15</sup>

### 2.3. Behavioural exploitation techniques and informational vulnerabilities

28. These following cases illustrate a common underlying phenomenon in digital markets: behavioural exploitation techniques — such as dark patterns, pre-selected defaults, friction in exit pathways, engagement algorithms and forms of fake social proof — may generate effects extending beyond individual consumer harm proving capable of shaping user behaviour, influencing transactional decisions and reinforcing user retention within digital ecosystems.

29. The eDreams, Amazon (recurring purchase), primarily exploit choice architecture and user inertia mechanisms; Trustpilot, TripAdvisor and influencer-marketing cases involve the distortion of reputational signals and social proof mechanisms. Although primarily addressed under consumer protection rules, such practices may also affect competitive dynamics by increasing switching costs, strengthening lock-in effects, distorting reputational and informational signals, and reducing the contestability of digital markets. The Tit Tok case show how algorithmic profiling and recommender systems may exacerbate *behavioural* vulnerabilities by continuously steering user attention and engagement, thereby reinforcing *lock-in* effects and user dependence within digital ecosystems.

30. From this perspective, those cases are not relevant solely from a consumer protection perspective, as they reflect the growing overlap between consumer harm and competition concerns in platform-based and data-driven markets.

31. The eDreams case<sup>16</sup> represents a paradigmatic example of how behavioural manipulation mechanisms may contribute to artificially locking a user base and reducing competitive pressure between substitutable services. The Authority found unfair commercial practices based on the use of visual and emotional persuasion techniques in the digital environment, through dark patterns designed to emphasise the advantages of the

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correcting graphic, linguistic or design features that could create a distorted perception of the service as free or neutral.

<sup>14</sup> See Case PS12829 – LinkedIn/Information Provided at Registration Stage, commitment decision No. 31767, published in Bulletin No. 49/2025.

<sup>15</sup> In other words, transparency is not only a consumer protection issue, as it may produce effects on lock-in, entry barriers and undue competitive advantages.

<sup>16</sup> See Case PS12853 – eDreams/Prime Subscription and Online Travel Services, infringement decision No. 31824, published in Bulletin No. 6/2026.

Prime subscription and induce consumers to subscribe to and remain within the service.<sup>17</sup> These commercial practices were considered capable of distorting the decision-making process of the average consumer by affecting the way in which users chose and remained within the platform.

32. A similar rationale emerges in the Amazon case on the pre-selection of recurring purchase and fast delivery<sup>18</sup>. The Authority found that, on the product pages of Amazon.it, the recurring purchase option was pre-selected for a wide range of products instead of the single-purchase option. The proceedings concerned practices capable of affecting consumer decision-making through the use of defaults and interface mechanisms designed to steer users towards recurring purchasing models. The commitments accepted by the Authority focused on the design of the interface and how available options were presented, with a view to restoring greater transparency and informational symmetry in the consumer decision-making process (costs and timing)<sup>19</sup>. Although the case was opened under consumer protection rules, the practices at issue also displayed features capable of affecting switching, user behaviour and competitive dynamics in digital markets. The systematic pre-selection of recurring purchase options may contribute to consolidating the user's ongoing relationship with the platform, increasing user *inertia* and reducing recourse to competing channels.

33. Likewise, the Sky case concerning subscription cancellation procedures<sup>20</sup> raised concerns about operational frictions and choice architectures in digital markets by way of subscription-based services. The Authority examined withdrawal, downgrade and package-removal procedures characterised by limited visibility and operational complexity, which were liable to affect users' ability to effectively exercise their contractual choices. The commitments undertaken by Sky included, *inter alia*, making information on withdrawal and downgrade procedures more accessible and transparent, as well as simplifying the relevant operational pathways. The case shows how frictions and obstacles in exit processes, while not formally limiting contractual freedom, may nonetheless contribute to

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<sup>17</sup> Specifically, in the eDreams case, the Authority found that the interface design — through visual emphasis, suggestive messages and non-neutral purchase pathways — was capable of steering users' decisions in a non-transparent manner towards subscribing to the service. This aspect is reflected in the provisions under Article 59-undecies of the Consumer Code, in the section on “distance marketing of consumer financial services” protecting consumers from dark patterns. The provision introduces a prohibition of salience manipulation practices, requiring that the various available options be presented in a balanced manner, without giving greater prominence to one choice over others.

<sup>18</sup> See Case PS12585 – Amazon/Pre-selection of Recurring Purchase and Fast Delivery, commitment decision No. 31172, published in Bulletin No. 17/2024.

<sup>19</sup> Specifically, Amazon's commitments mainly concerned three areas: transparency of pre-selected options. Amazon committed to modifying the interface so as to make it clearly perceptible when an option (for example fast purchase, reorder or fast delivery) is pre-selected by default. The objective is to avoid consumers being automatically directed towards choices that are not fully informed. Neutrality of consumer choice. Changes were introduced to reduce excessively steering “nudge” effects, ensuring that different purchase and delivery options are presented in a more balanced way, without undue emphasis on faster or automated options. Strengthening of information on service conditions. Amazon improved the clarity of information relating to delivery times, costs, reorder conditions and the functioning of fast options, so as to allow an effective comparison between alternatives.

<sup>20</sup> See Case PS12802 – Sky/Subscription Cancellation Procedures, commitment decision No. 31530, published in Bulletin No. 17/2025.

reinforcing lock-in effects, increasing switching costs and, in substantive terms, reducing market contestability.<sup>21</sup>

34. A further aspect concerns the reliability of reputational information and, more generally, forms of social proof shaping user behaviour in digital markets. In such contexts, online reviews, reputational rankings, followers and social interactions play a central role in consumers' decision-making processes, influencing the comparability of offers, perceptions of service quality and trust in digital operators. Here again, unfair commercial practices capable of artificially altering such reputational signals may produce effects extending beyond individual consumer harm, indirectly affecting competitive dynamics.

35. In the TripAdvisor investigation<sup>22</sup>, the Authority considered misleading the manner in which the platform presented reviews as spontaneous, authentic and originating from genuine travellers, despite the inadequacy of the controls in place to prevent or limit the risk of fake reviews. More recently, in the Trustpilot case<sup>23</sup>, the Authority found the verification systems adopted by the platform to be inadequate in ensuring the authenticity of published reviews, including those labelled as "verified".<sup>24</sup> Both proceedings show how unreliable reputational systems may distort the mechanisms through which users compare operators, favouring those benefitting from inaccurate representations of service quality, thereby affecting users' ability to make genuinely informed choices.

36. A similar rationale emerges from proceedings concerning influencer marketing and non-transparent commercial communications. In the Asia Valente / Meta case concerning fake followers<sup>25</sup>, the Authority initiated proceedings against both Meta-Instagram and the influencer Asia Valente in relation to potentially misleading commercial communications disseminated through Instagram. In particular, the Authority preliminarily considered that the influencer had failed to clearly disclose the promotional nature of sponsored content and commercial relationships with brands, while Meta-Instagram was alleged not to have adopted adequate measures to prevent or adequately address misleading commercial communications and artificial amplification practices on the platform, including the use of fake followers and inauthentic interactions capable of distorting users' perception of popularity and credibility. The proceedings were ultimately concluded through the

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<sup>21</sup> In the Sky proceedings, the Authority addressed frictions and obstacles in cancellation and downgrade procedures, considered capable of limiting users' ability to terminate the contractual relationship and, therefore, of affecting freedom of choice and switching dynamics. As already noted, the provisions protecting against dark patterns under Article 59-undecies of the Consumer Code, in the section dedicated to the "distance marketing of consumer financial services", also establish the principle of symmetry between entry into and exit from the service, according to which withdrawal procedures may not be more complex or burdensome than subscription procedures.

<sup>22</sup> See Case PS9345 – TripAdvisor/False Online Reviews, fining decision No. 25237, published in Bulletin No. 50/2014.

<sup>23</sup> See Case PS12962 – Reviews on Trustpilot, fining decision No. 31878, published in Bulletin No. 12/2026.

<sup>24</sup> The AGCM primarily alleged that the practices at issue consisted of insufficient transparency regarding the functioning of the ranking system and the calculation of the TrustScore; inadequate measures to verify the authenticity and genuineness of consumer reviews; the potentially misleading use of the label "verified review"; insufficient disclosure concerning the impact of paid-for services purchased by reviewed businesses on the presentation and visibility of reviews; allowing businesses to selectively invite customers to submit reviews, thereby potentially influencing the overall rating and review outcome ("selective review solicitation").

<sup>25</sup> See Case PS12653 – Asia Valente/Fake Followers, commitment decision No. 31684, published in Bulletin No. 40/2025.

acceptance of commitments, including commitments undertaken by Meta.<sup>26</sup> Once again, the relevance of the practice does not concern solely the transparency of commercial communications, but also the fact that followers, interactions and artificial popularity may distort the reputational signals on which users base their economic decisions, thereby affecting the visibility, credibility and competitive capacity of operators active on digital platforms and rewarding artificial popularity rather than quality and genuine reputation.

37. The TikTok investigation<sup>27</sup> highlights particularly clearly the new vulnerabilities arising from the use of algorithmic recommendation systems, profiling mechanisms and engagement optimisation tools. The Authority initially opened proceedings noting the absence of adequate monitoring systems for third-party content and the failure to apply the platform's own guidelines to potentially harmful content. Notably, certain content was repeatedly shown to users on the basis of algorithmic profiling and previous interactions which encouraged more intensive and prolonged use of the social network, with particularly significant risks for vulnerable users, especially minors.

38. The case highlights the role that recommender systems, engagement algorithms and profiling techniques may play in shaping user behaviour, attention levels and user retention within the platform. It also shows how these mechanisms may influence competitive dynamics in digital markets by favouring business models based on maximising engagement, data collection and permanence within the ecosystem. From this perspective, the focus shifts from traditional vulnerabilities stemming from information asymmetries towards more sophisticated forms of algorithmic steering and behavioural exploitation, based on content personalisation and the optimisation of user interactions.

#### **2.4. Algorithms, AI and profiling: new forms of convergence between competition and consumer protection**

39. A further area of focus concerns the growing role of algorithms, profiling systems and artificial intelligence tools in digital markets. AI chatbots, recommendation systems, generative AI tools, personalisation mechanisms and profiling techniques may simultaneously operate as competitive levers, factors of ecosystem reinforcement, engagement tools and potential channels for informational and behavioural manipulation.

40. In this context, AI tends to intensify the convergence between competition concerns, consumer protection, data governance and informational integrity.

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<sup>26</sup> The case was closed with commitments (Article 27(7) of the Consumer Code), both by the influencer and by Meta. The influencer's commitments (Asia Valente) involved the removal or cessation of misleading practices through the elimination/cessation of the use of inauthentic followers and advertising transparency, including the obligation to clearly indicate when content is sponsored, the use of recognisable hashtags/labels (e.g. #pubblicità, #advertising, #ad), and the commitment not to repeat the conduct in the future. The aim was to avoid misleading consumers as to the influencer's actual popularity and the commercial nature of the content. As regards Meta's commitments (Instagram), the gatekeeper undertook more structural and systemic commitments concerning the strengthening of tools against fake engagement by improving systems for detecting and removing fake followers; stricter enforcement of policies against misleading practices; promotion of commercial transparency through tools for labelling sponsored content (e.g. "paid partnership"); and awareness-raising among users/influencers through guidelines on the correct use of the platform. The objective was to affect not only the individual case, but the functioning of the digital market.

<sup>27</sup> See Case PS12543 – TIKTOK "French Scar", infringement decision No. 31124, published in Bulletin No. 11/2024.

41. The Authority investigated several cases with its antitrust powers addressing the ways in which algorithmic systems and AI technologies may affect competitive dynamics in digital markets, users' economic behaviour and the ways through which demand is acquired, retained and exploited.

42. In the Meta AI/WhatsApp antitrust investigation<sup>28</sup>, the Authority adopted interim measures vis-à-vis the platform in relation to the contractual access conditions provided for in the WhatsApp Business Solution Terms. The Authority considered them liable to limit the supply of competing AI chatbots and, *prima facie*, to produce exclusionary effects in the emerging AI services markets. In particular, the Authority's concerns related to the risk that the integration of new AI technologies within the WhatsApp ecosystem could operate as a mechanism of ecosystem reinforcement, through the exploitation of the platform's user base, data and network effects, with a view to extending market power into adjacent digital markets.

43. A further dimension of this area concerns transparency regarding the limits, risks and reliability of content generated by AI systems, which the Authority has addressed through consumer protection tools. The Authority has carried out several consumer protection proceedings concerning AI Chatbots to ensure clarity of information to users concerning the risks associated with AI hallucinations<sup>29</sup>.

44. In emerging markets such as generative AI services, the quality, reliability and transparency of the information provided to users may also acquire direct relevance for the proper functioning of competitive dynamics.

45. In this context, reference should also be made to the recent Memorandum of Understanding signed between the AGCM and the Italian Data Protection Authority, reflecting the growing interrelationship between consumer protection, competition and data protection in digital markets characterised by the intensive use of algorithms, profiling systems and AI technologies. The MoU provides for structured forms of coordination, mutual consultation, information sharing and investigative cooperation in cases where the processing of personal data is also relevant from a competition or consumer protection perspective.

### 3. Dual competence and internal coordination

#### 3.1. The legal framework

46. Although the Authority's intervention in digital markets is grounded in distinct legal bases, objectives and assessment criteria, it does not operate as a binary system. It is better understood as a multi-layered framework combining different enforcement tools according to principles of coordination, complementarity and proportionality. Experience in digital markets shows an increasing interrelation between competition and consumer protection enforcement, in a context where economic power is exercised not only through

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<sup>28</sup> See Case A576 – META AI, interim measures decision No. 31775, published in AGCM Bulletin No. 50/2025; see also the decision opening the investigation (No. 31634, published in Bulletin No. 30/2025) and the interim proceedings (No. 31728, published in Bulletin No. 46/2025).

<sup>29</sup> See Case PS12942 – DEEPSEEK/Information Notice on “Hallucinations”, commitment decision No. 31784, published in Bulletin No. 1/2026, Case PS12973 – NOVA AI CHATBOX/Information Notice on “Hallucinations”, commitment decision No. 31935, published in Bulletin No. 18/2025 and Case PS12968 – MISTRAL AI/Information Notice on “Hallucinations”, commitment decision No. 31864, published in Bulletin No. 10/2026.

the control over infrastructures, data and digital ecosystems, but also through the ability to steer user behaviour and influence users' economic decisions.

47. Antitrust enforcement is grounded in the Competition Act (Law No. 287/1990) and Articles 101 and 102 TFEU. It pursues the objective of preserving the competitive structure of the market, namely market contestability and the proper functioning of competition, by safeguarding the competitive process and preventing conduct liable to restrict competition or exploit market power. In this context, the legal assessment focuses on the conduct's capability to produce distortive effects on competition, including through exclusionary practices such as leveraging or lock-in, or exploitative practices, particularly concerning data. The Authority is also competent to apply the rules on abuse of economic dependence<sup>30</sup>. With regard to digital platforms, those rules establish a rebuttable presumption of economic dependence for undertakings using intermediation services provided by platforms playing a decisive role in access to final users or suppliers. This framework reflects the systemic role of digital ecosystems and the asymmetries in bargaining power that may characterise relationships between platforms and business users, including as a result of network effects and data availability.

48. Consumer protection rules, in line with the European regulatory framework, aim to safeguard consumer decision-making, transparency, freedom of choice and the fairness of commercial relationships. To this end, they ensure that consumers are able to make informed, conscious and autonomous transactional decisions, free from misleading practices, manipulation or undue influence. Consumer protection enforcement is primarily grounded in the Consumer Code (Legislative Decree No. 206/2005) and in the legislation on misleading and comparative advertising (Legislative Decree No. 145/2007 implementing Directive 2006/114/EC). In particular, the Consumer Code regulates:

1. unfair commercial practices (Articles 20–27 Consumer Code, implementing Directive 2005/29/EC), including misleading practices connected to the dissemination of false, incomplete or deceptive information, and aggressive practices manifested, for example, through undue pressure, obstacles to the exercise of rights, dark patterns or manipulative choice architecture. Enforcement in this area displays features similar to antitrust analysis, operating as an *ex post* and effects-based system in which the unlawfulness of the practice requires not only a breach of professional diligence, but also the capability to distort the economic behaviour of the average consumer;
2. unfair terms in contracts between traders and consumers (Articles 33–38 Consumer Code), which govern contractual conditions and significant imbalances in the rights and obligations of the parties. The assessment does not require proof of an impact on the consumer's economic behaviour, but rather follows a rule-based model, combined with an evaluative component, aimed at ensuring contractual balance through the removal of clauses generating a significant imbalance to the detriment of the consumer;
3. the general framework of consumer rights (Articles 45–67 Consumer Code, implementing Directive 2011/83/EU), including, *inter alia*, pre-contractual information obligations and the right of withdrawal. In this area, the breach of

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<sup>30</sup> See Article 9 of Law No. 192/1998, which allows intervention even in the absence of a dominant position, where there is a significant imbalance in commercial relations between undertakings.

statutory obligations constitutes in itself the basis for intervention, without requiring a specific demonstration of effects on consumer economic behaviour.<sup>31</sup>

49. Following the transposition of the so-called “Omnibus Directive”, the national consumer protection framework has been further strengthened with regard to digital markets and the data economy. The reform introduced more effective tools to tackle unfair commercial practices online<sup>32</sup>, including dark patterns<sup>33</sup>, misleading reviews and non-transparent advertising.<sup>34</sup> It also directly affected the Authority’s investigative and fining activities, strengthening cooperation mechanisms among national authorities and expanding the tools available to reduce information asymmetries and manipulative practices in digital markets. The primary objective of consumer protection enforcement remains that of increasing user awareness regarding their rights and the available means of redress, also with a view to ensuring fairer competitive conditions among digital operators.

50. Although antitrust and consumer protection regimes pursue autonomous objectives and are based on distinct legal criteria, national scholarship recognises, in principle, that they may apply concurrently where the same conduct simultaneously affects both the proper functioning of the competitive process and consumers’ freedom and awareness in making economic choices.

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<sup>31</sup> By way of example, failure to provide for or recognise the right of withdrawal constitutes a direct breach of the consumer rights framework. By contrast, the manner in which that right may be exercised can also be relevant under the rules on unfair commercial practices where it hinders or discourages the effective exercise of the right, affecting the consumer’s freedom of choice. This may be the case, for example, where the undertaking makes withdrawal difficult through complex pathways or dark patterns, hides information, or creates frictions, for instance through mandatory call centres, multiple clicks, etc..

<sup>32</sup> Unfair commercial practices include misleading practices (for example ambiguous, deceptive or omission-based promotions) and aggressive practices (for example obstacles to the exercise of consumer rights, deficiencies in after-sales assistance, breaches of legal or contractual guarantees, improper handling of personal data or “zero-price” practices and pre-selection of optional services).

<sup>33</sup> According to the Authority, dark patterns include: i) misleading pre-selections, including the automatic addition to the basket of ancillary services (e.g. travel insurance or “Prime” subscriptions) that the user has not explicitly requested; ii) information omissions embedded in the design which conceal actual costs or contractual terms behind poorly visible hyperlinks or complex navigation pathways; iii) undue conditioning (aggressive practices) through the use of interfaces that make it extremely difficult to cancel a subscription or exit a service, creating obstacles that discourage the consumer; iv) false urgency and scarcity, through manipulative messages (e.g. fake countdowns) designed to exert psychological pressure on users to complete the purchase immediately. The Italian Data Protection Authority refers to these as deceptive design patterns, namely interface designs that hinder users’ ability to make autonomous choices.

<sup>34</sup> Directive (EU) 2019/2161 (“Omnibus Directive”) strengthens consumer protection in the digital economy by updating the main relevant directives (in particular Directives 2005/29/EC and 2011/83/EU). It extends protection also to digital services provided without monetary payment, recognising the economic value of personal data (in coordination with Directive (EU) 2019/770); i.e. data become consideration for the service, ensuring the extension of consumer protections also to “free” services or services provided in exchange for attention. To reduce online information asymmetries, the reform introduces stricter transparency obligations for online platforms, requiring clarity on the identity of sellers, ranking criteria for search results, the advertising nature of content and the reliability of reviews. The fight against unfair digital practices enables intervention against widespread phenomena such as fake reviews, hidden advertising and dark patterns.

### Box 1. Concurrent application in principle of antitrust and consumer protection instruments

National administrative case-law has progressively clarified that unfair commercial practices rules and competition rules pursue distinct objectives and may apply concurrently where the same conduct affects both consumer protection interests and the proper functioning of competition. In particular, the Council of State has relied on the criterion of “incompatibility” in defining the relationship between the two regimes.

In other words, according to the national courts, competition and consumer protection operate according to complementary, rather than mutually exclusive, logics, as they are aimed at protecting distinct yet potentially interrelated interests in digital markets. The same conduct may therefore be assessed under both frameworks where it produces distinct but concurrent effects, namely effects on the competitive process and exploitative or manipulative effects on consumers, i.e. conduct capable of distorting the economic behaviour of the average consumer.

This approach may prove particularly relevant in digital markets, where algorithms, interfaces, data, reputational systems and dark patterns may affect both competitors’ ability to compete and users’ economic behaviour. Consumers in digital markets are not merely the “ultimate beneficiaries” of competition, but also exposed to information asymmetries, manipulative practices and distortive choice architectures. This approach is highly consistent with the intrinsic functioning of digital markets, based on the control of data, algorithms, interfaces and reputational systems, as well as with the behavioural economics dimension of user decision-making.

51. In this context, the Authority’s dual competence in competition and consumer protection has so far enabled the adoption of a coordinated and systemic approach, based on the complementary use of enforcement tools according to the nature of the concerns identified and the effects produced in digital markets.

### 3.2. Institutional, organisational and functional framework

52. The Authority is organised into two macro-areas with parallel competences: one dealing with competition and the other with consumer protection. Sectoral specialisation is largely mirrored across the two areas. The Authority is also progressively integrating data analytics tools, web scraping and artificial intelligence techniques in order to analyse large volumes of data, monitor digital markets and identify behavioural patterns relevant for enforcement, in both competition and consumer protection. This evolution, now institutionalised through a dedicated Data Science Unit reporting to the Chief Economist, reflects the need for an interdisciplinary approach capable of combining economic analysis, legal assessment and technical expertise.

53. The functioning of this framework relies on internal coordination mechanisms, including periodic case allocation meetings, structured interdepartmental exchanges, information sharing and, where necessary, joint analyses. These mechanisms enable the timely identification of potential competition and consumer protection concerns and the selection of the most appropriate enforcement tool depending on the nature of the harm, market characteristics, urgency and the possible need to ensure effective and proportionate remedies.

54. This organisational model makes it possible to reduce the risk of fragmented enforcement and to maximise complementarities between different legal instruments. The

circulation of information and expertise across the Authority's different divisions also promotes greater consistency in administrative action, quicker identification of emerging phenomena and greater adaptability to technological evolution and new forms of digital interaction.

#### 4. Conclusions

55. The analysis of the Authority's decisional practice highlights a significant evolution in enforcement in digital markets. The competitive process is no longer shaped solely by traditional supply-side dynamics, but also by informational signals, digital architectures and interaction mechanisms directly affecting users' economic behaviour. Alongside traditional conduct aimed at strengthening market power through the control of ecosystems, data, platforms and interfaces, increasing importance is therefore attached to analysing the mechanisms through which undertakings influence users' decision-making processes by means of algorithms, reputational systems, personalisation, engagement techniques and choice architectures.

56. From this perspective, the consumer is not merely the final beneficiary of protection, but also play a role in ensuring the proper functioning of competitive dynamics. Indeed, the Authority's practice shows how competition in digital markets is increasingly mediated by informational signals whose quality, reliability and transparency are decisive both for the formation of individual choices and for the proper functioning of the market. Protecting informational integrity and enforcing rules against dark patterns, exploitative choice architectures and behavioural targeting techniques therefore matter not only from a consumer protection perspective, but also indirectly from a pro-competitive standpoint, by helping preserve comparability between offers, user mobility and competitive pressure.

57. The Authority's enforcement experiences a substantially integrated enforcement model in which antitrust and consumer protection interventions are regarded as interdependent phenomena. Practices altering user behaviour may reinforce lock-in, switching costs, ecosystem dependence and network effects; at the same time, control over data, platforms and digital infrastructures may enable increasingly sophisticated forms of behavioural exploitation and informational manipulation. From this perspective, user behaviour no longer constitutes merely an effect of market power, but also one of the mechanisms through which such power is built, maintained and extended.

58. Increasing importance is being attached to rule-based and ex ante frameworks, in which the breach of specific regulatory obligations may in itself constitute the basis for intervention. In the competition field, the DMA implicitly reflects the idea that practices based on the control of interfaces, defaults, data and user experience — often linked to behavioural mechanisms typically analysed under consumer protection rules — may be exploited by gatekeepers to reinforce lock-in, network effects and ecosystem dependence,

thereby undermining market contestability.<sup>35</sup> In parallel, on the consumer protection side<sup>36</sup>, the transposition of the Omnibus Directive into the national legal framework, has progressively shifted attention from individual practices to the overall configuration of the digital environment and the decision-making architectures designed by operators (compliance by design)<sup>37</sup>, systematising approaches already reflected in the Authority's practice concerning dark patterns, manipulative interfaces and switching frictions.<sup>38</sup>

59. The evolution of the European framework further strengthens the multi-level dimension of enforcement in digital markets. The Authority has been designated as the national competent authority for cooperation in the application of the Digital Market Act, within a system in which the European Commission retains exclusive enforcement powers.<sup>39</sup> At the same time, the Authority participates in the European Competition

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<sup>35</sup> With respect to this issue, the DMA reflects the idea that control over the interface and user experience; the use of defaults; switching difficulties; the combination of data; user acquisition and retention mechanisms; ranking techniques or self-preferencing not only affect individual freedom of choice, but may also produce structural effects on competitive dynamics, reinforcing lock-in, network effects and ecosystem dependence. This clearly emerges, for example, in the obligations relating to uninstalling, switching and default settings (Article 6 DMA, now Article 7 in the consolidated text); the prohibitions on combining data without consent; interoperability obligations; limitations on self-preferencing; and rules on the contestability of core platform services.

<sup>36</sup> Further forms of *ex ante* regulation emerge from sectoral and European legislation — such as the Digital Services Act and personal data protection rules — where enforcement is distributed among different competent authorities, outlining a multi-level system in which the Italian Competition Authority retains a central role with regard to antitrust and consumer protection enforcement.

<sup>37</sup> In Italy, the reform of the Consumer Code — introduced by Legislative Decree No. 209/2025, implementing Directive (EU) 2023/267 on distance marketing of consumer financial services — imposes on traders a genuine preventive organisational obligation. In particular, undertakings are required to design, structure and manage online interfaces in such a way as not to mislead or manipulate consumers. From this perspective, the codification of specific standards on digital interfaces — together with the provisions on the right of withdrawal (Article 54-bis Consumer Code) and transparency obligations — provides explicit normative parameters for assessing professional diligence under Article 20 of the Consumer Code and the fairness of commercial practices. From a procedural perspective, the new framework forms part of a multi-level system: the supervision of *ex ante* obligations is entrusted to sectoral regulatory authorities, while the Authority's remit over unfair practices remains unaffected. This complementarity will require coordination, particularly in cases of overlap between organisational breaches and commercial practices, also in light of the prohibition on double fining (*ne bis in idem*).

<sup>38</sup> See the above-mentioned consumer protection proceedings Sky, eDreams and Google. First, the relevant rules bring into focus the prohibition of practices involving salience manipulation practices requiring that the various available options be presented in a balanced manner, without giving greater prominence to one choice over another (eDreams). Secondly, the provision prohibits forms of undue pressure on users, such as repeated solicitations or persistent pop-ups that interfere with the browsing experience and condition the decision-making process (Google). Finally, the principle of symmetry between entry into and exit from the service is established, according to which withdrawal procedures may not be more complex or burdensome than subscription procedures (Sky).

<sup>39</sup> The DMA regulates the way in which national authorities endowed with the powers referred to in Article 38(7) of the Regulation support the Commission in the application of the DMA. In this respect, the Authority has adopted a Regulation governing, in particular, the exercise of investigative powers to address requests for information and document production to undertakings and entities where it identifies infringements of the obligations laid down in Articles 5, 6 and 7 DMA by so-called gatekeepers; see Decision of 23 July 2024 approving the Regulation on forms of collaboration and cooperation pursuant to Article 18 of Law No. 214/2023 (implementing the Digital Markets

Network (ECN) and the Consumer Protection Cooperation Network (CPC), ensuring effective coordination of enforcement activities among national authorities competent in their respective fields within the EU.<sup>40</sup> The Authority also participates in international networks such as the International Competition Network (ICN)<sup>41</sup> and the International Consumer Protection and Enforcement Network (ICPEN)<sup>42</sup>. Through these, it contributes to the progressive convergence of enforcement approaches and to the dissemination of common principles relating to digital markets, platforms, AI, data, transparency and user protection.

60. Increasing importance should also be attached to the growing international dialogue between competition and consumer protection authorities. Joint initiatives such as the OECD Roundtable on Competition and Consumer Policy reflect increasing awareness of the need to address, in a coordinated manner, the areas of overlap between competitive dynamics, behavioural economics and user protection in digital markets.

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Act), published in Official Journal No. 191/2024. To date, the relevant powers have not yet been exercised.

<sup>40</sup> The ICPEN Network is an international network of public authorities competent in consumer protection matters, aimed at fostering cross-border cooperation; sharing best practices; coordinating enforcement activities; and developing common tools against unfair commercial practices, online fraud and consumer issues in digital markets. It includes authorities from numerous countries, including the AGCM, the US FTC, the UK CMA and other national consumer protection authorities. In digital markets, ICPEN has paid particular attention to dark patterns, influencer marketing, online reviews, AI and algorithmic transparency, online manipulative practices, subscription traps and automatic renewals.

<sup>41</sup> The ICN is an informal international network bringing together more than 140 national competition authorities worldwide. Created in 2001, it aims to foster cooperation among antitrust authorities; promote convergence and best practices in the application of competition law; develop common tools and principles on merger control, abuses of dominance, cartels and digital markets; and facilitate the exchange of experience and coordination in cross-border proceedings. The ICN operates mainly through recommendations, guidelines, information and expertise exchanges via working groups, reports, workshops and annual conferences. In recent years, the ICN has paid particular attention to digital markets, ecosystems, big tech, algorithms and AI, data-driven markets, digital mergers, behavioural remedies and cooperation with consumer protection authorities.

<sup>42</sup> The European Competition Network (ECN) is the European network of national authorities competent in competition matters, created and governed by Regulation (EC) No. 1/2003. The ECN enables coordination in the application of Articles 101 and 102 TFEU, promoting efficient case allocation, investigative cooperation and consistent enforcement approaches. Similarly, the Consumer Protection Cooperation Network (CPC) is the European network of national authorities competent in consumer protection matters, established by Regulation (EU) 2017/2394. It aims to tackle cross-border infringements of consumer rights and coordinate the actions of national authorities in cases involving several Member States, through tools such as information exchange, coordinated investigations (sweeps) and joint actions. In this area, however, certain challenges remain in cross-border enforcement, linked to differences in national powers and procedures, difficulties in enforcing decisions against non-EU operators and possible overlaps between different regulatory frameworks. Taken together, the CPC and ECN reflect a multi-level enforcement model at European level (see the Apple ATT, Meta/AI and Google consent cases).