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Italy

1. Introduction

1. After the 2008 financial crisis, regulatory supervision has been strengthened in order to ensure the stability of the financial system and sound and prudent management of intermediaries. At international, EU and national level, efforts were intensified to reduce the risk of intermediaries and more effective mechanisms have been introduced to strengthen checks on internal decision-making process and corporate governance structures.

2. The Italian Competition Authority (Authority or AGCM) welcomes this opportunity to share its experience of increasingly closer cooperation with the financial authorities and to discuss the evolution of the regulatory framework over the last ten years, with important implications for both competition and consumer protection enforcement.

2. Ten years on from the financial crisis: increased cooperation with regulators

3. The 2008 financial crisis occurred at a time where the Italian banking system reorganisation was underway: the sectoral approach for the financial oversight (see box below) was confirmed while antitrust enforcement had just been transferred from the Central Bank of Italy to the Authority pursuant to the Law n. 262 of 2005 (*Law on the protection of saving and on financial market*), which also promotes cooperation between the AGCM and the financial regulators; new forms of corporate governance were being tested; and, a consolidation process in a historically fragmented sector was promoted by the government institutions¹.

4. Notwithstanding this, the financial crisis revealed some outstanding issues in the banking sector, including corporate governance failures with consequences on loan quality, elevated fragmentation with related inefficiencies and opacity in the behavior of financial operators. In fact, while both commercial and mutual Italian banks were not initially affected by the global financial crisis, things gradually changed and the above mentioned issues became increasingly evident as the crisis spread to the real economy.

¹ For an in-depth description of the 2005 banking reform, see the AGCM contribution to the 2010 OECD Policy Roundtable on *Competition, Concentration and Stability in the Banking Sector*, available at: http://www.agcm.it/en/component/joomdoc/international/oecd/2010_CC-FEB_Banking_sector.pdf/download.html

Box 1. The Italian financial institutional architecture

The Bank of Italy is entrusted with banking and financial supervisory powers, in harmony with European Union law, exercised with the aim of: protecting sound and prudent management on the part of financial intermediaries (micro-prudential supervision); overall stability (macro-prudential supervision); the efficiency and competitiveness of the financial system; the transparency and fairness of the transactions and services provided by entities such as banks, banking groups, financial firms and payment institutions.

The rules on transparent contract terms and fair treatment of customers apply to all banking and financial products and services (e.g. current accounts, deposits, loans and payment services) offered in Italy. The regulatory and control powers, however, does not extend to investment services or to the placement of financial products for investment purposes.

Indeed, while the Bank of Italy has banking and financial supervisory powers to the financial stability of the above entities, CONSOB is responsible for the transparency and fairness of these entities' behaviour towards investors. Its activity is aimed at protecting the investors' interests and, in relation to this, CONSOB is the competent authority for ensuring (among others):

- transparency and correct behaviour of financial market participants;
- disclosure of complete and accurate information by listed companies;
- compliance with public offering and public tender rules; and
- appropriate investigations with respect to potential infringements of insider dealing and market manipulation law.

The Institute for the Supervision of Insurance (IVASS) task is to ensure suitable protection of policyholders and of the persons entitled to insurance benefits through the pursuit of the sound and prudent management of insurance and reinsurance undertakings and of their transparency and fairness towards customers (market conduct). IVASS also pursues the stability of the financial system and markets. IVASS supervises over the fairness of conducts by companies vis-à-vis consumers and over the transparency of insurance products. It establishes the rules of conduct which insurers and intermediaries must observe when supplying and executing contracts and monitors compliance with them.

2.1. Issues in corporate governance in the banking sector

5. In the aftermath of the financial crisis, the AGCM intervened in the public debate² by proposing a long awaited reform of the corporate governance in the banking sector, which was considered a fundamental step to ensure the recovery of the reputation of the banking system, due to widespread mistrust on both the demand side at savers/investors

² See the AGCM Opinion No. AS496 - *Interventi di Regolazione Sulla Governance di Banche e Assicurazioni*, January 2009.

level and the supply side at the interbank system level, when the Italian government had to intervene to deal with several failing/insolvent banks over the period 2015-2017³.

6. Indeed, according to the Authority, short terms government measures to support the banking system could only be effective if long term issues in corporate governance - such as the widespread presence of stable personal links between shareholders of competing financial operators, the lack of transparency in the decision making process with the fundamental but not always clear role of banking foundations, the obsolete regulation of mutual and cooperative banks – were also properly and timely addressed. Transparent and responsible corporate governance structures were considered essential for improving the efficiency of the Italian financial sector, by increasing its contestability.

7. The AGCM proposals in this area were backed by an extensive enquiry on the corporate governance in the banking and insurance sector⁴. The enquiry revealed: the connections between competitors, especially shareholders, deriving from shareholders' agreements and the personal ties of interlocking directorates (e.g., 80% of the entities surveyed included individuals holding simultaneous positions within competing entities and around 19% of the companies analyzed - representing 42.3% of the assets – were characterized by the presence of competitors among their shareholders); the relevant weight of banking foundations as shareholders in the largest Italian banks, subject to political influence, which in turn affects the composition of the decision-making bodies and the activities of the banks; and, the special regulation of mutual banks and cooperative credit banks, which limited their contestability even though their business models became more similar to commercial banks.

8. More recently, in 2014, the Authority highlighted the importance of the governance reform in its submission to the Government which was in the process of drafting an annual bill for competition⁵. In particular, the Authority called for a more vigorous action to address the influence of foundations as shareholders in banks, by

³ In November 2015 a solution was found to the crisis of four banks (Banca delle Marche, Banca Popolare dell'Etruria e del Lazio, Cassa di Risparmio della Provincia di Chieti and Cassa di Risparmio di Ferrara) under special administration, based on the new rules introduced in the Italian legal system in transposing Directive 2014/59/EU on the recovery and resolution of credit institutions and investment firms (BRRD). Four bridge banks had been set up as part of the crisis resolution and they were sold to other Italian banks in 2016. At the end of 2016, the Government passed public support measures for the banking system: three banks - Banca Monte dei Paschi di Siena, Banca Popolare di Vicenza and Veneto Banca - were able to take advantage of the State guarantee on bond issues and to apply for precautionary recapitalization with public funds. For an overview of the bank crisis in 2015-2016, see annual reports for 2015 and 2016 of Bank of Italy, available at: <http://www.bancaditalia.it/pubblicazioni/relazione-annuale/>.

⁴ See AGCM Market Study No. IC36 - *Corporate governance in the banking and insurance sector*, December 2008. See reference in footnote n. 1 for a short description of the findings of the market study.

⁵ See the AGCM opinion No. AS1137, *PROPOSTE DI RIFORMA CONCORRENZIALE AI FINI DELLA LEGGE ANNUALE PER IL MERCATO E LA CONCORRENZA ANNO 2014*, July 2014 (available at: <http://www.agcm.it/component/domino/open/C12563290035806C/A99086EB62C1B736C1257D0F003383F4.html>). For a description in English of the content of the opinion, see: MONTANARI, Maria Grazia, "The ICA's Advocacy Activity: Proposals For The Annual Law On Competition 2014". *Rivista Italiana di Antitrust / Italian Antitrust Review*, [S.l.], v. 1, n. 3, Dec. 2014. ISSN 2284-3272. Available at: <http://iar.agcm.it/article/view/11066/10259>

suggesting to extend the prohibition of control also to *de facto* instances and by closing the gap in the framework regarding the requirements and the incompatibility of the supervisory bodies of the foundations, which lacked of an effective system of enforcement. As for the mutual banks and co-operative credit banks, the Authority called for the abolition their specific rules (limited voting rights, maximum limits on shareholdings and acceptance clauses for new shareholders), that limit their contestability.

9. Over the last few years, progress were made in improving corporate governance and bank management, as a result of the implementation of European Directives, specific provisions introduced by the Central Bank of Italy and industry codes of conduct⁶. Prompted by asset quality problems of the Italian banking system, since 2015 other reforms were approved aimed at improving the corporate governance of Italian banks, by addressing the specific challenges arising from the role played by vested interests. Legislation was passed to transform the governance structure of the larger cooperative banks (March 2015) and smaller cooperative (mutual) banks (February 2016) and to change the governance of foundations (April 2015)⁷.

10. The corporate governance reform concerning the interlocking directorates showed an intense cooperation among the AGCM and the competent authorities. A decree law banning cross-appointments at the Boards of financial institutions was approved in late 2011: echoing the Authority's 2008 recommendations, the provision prohibits that board members or executive officers are appointed in other financial companies that compete in the same relevant antitrust markets⁸. Since the norm raised a number of issues regarding its interpretation, in April 2012 the three surveillance authorities - the Central Bank of Italy, the Insurance Regulator (ISVAP) and the Italian Financial Regulator (CONSOB) - have adopted joint guidelines clarifying the implementation of the provision, accompanied in June 2012 by a cooperation agreement to facilitate coordination of the three regulators and the AGCM in order to ensure a consistent application of the ban on cross-appointments. While not directly involved in the implementation – which falls under the competence of the three regulators – the Authority, according to the cooperation agreement, could be informally or formally consulted in particular with respect to the definition of the relevant product or geographic markets and the assessment of situations of control within the definition given by the antitrust law. In addition, the

⁶ See Jassaud., N., “Reforming the Corporate Governance of Italian Banks”, *IMF Working Papers* WP/14/181, September 2014, available at: <http://www.imf.org/en/Publications/WP/Issues/2016/12/31/Reforming-the-Corporate-Governance-of-Italian-Banks-42373>

⁷ For an overview of these reforms, see Bank of Italy Annual Report for 2015 and 2016, available at: <http://www.bancaditalia.it/pubblicazioni/relazione-annuale/>. See also: Weber, A., “Bank Consolidation, Efficiency, and Profitability in Italy”, *IMF Working Paper*, WP/17/175, July 2017, available at: <http://www.imf.org/en/Publications/WP/Issues/2017/07/27/Bank-Consolidation-Efficiency-and-Profitability-in-Italy-45063>

⁸ In particular the provision provides that “*no member of management boards, supervisory boards and statutory board of auditors, as well as no executive officer, of an undertaking or group of undertakings which are active on the markets for banking, insurance and finance*” shall, at the same time, serve in “corresponding” positions in competing undertakings or groups of undertakings. Section 36 (2) clarifies that “*competing undertakings or groups of undertakings*” means undertakings which are “*active on the same product and geographic markets and which have no relationship of control*” (with the undertaking in which a person already serves as an executive) within the meaning of antitrust law.

cooperation agreement allows for quarterly exchange of information in relation to board members and executive officials of companies in the banking, insurance and financial sector.

2.2. Consolidation process

11. The above mentioned reforms had also the objective to tackle the heterogeneity and the fragmentation of the Italian banking sector (there were around 400 consolidated banking groups and about 200 subsidiaries in 2016)⁹ as a way to improve efficiency and increase competition especially at local level. Once fully implemented, these reforms are expected to result in a more concentrated banking sector over the course of the next few years.

12. Since the 2005 reform which transferred antitrust enforcement (mergers, cartels and abuse of dominant positions) in the banking sector from the Central Bank to the AGCM, mergers and acquisitions are separately assessed by the two entities, each for the matters falling within their scope. In case of trade-off between the two goals - competition and financial stability – the reform introduced a provision whereby the Central Bank of Italy may request the AGCM to authorize an otherwise anti-competitive transaction for the purposes of the financial stability of one or more of the parties involved, provided that the authorized transaction does not impose restrictions on competition which are not strictly necessary for the pursuit of the financial stability¹⁰.

13. Unlike the concentrations in the insurance sector, the 2005 reform did not envisage a cooperation mechanism in the banking sector whereby the AGCM is obliged to seek an opinion from the regulator on the envisaged decision¹¹; law n. 262 of 2005 requires all the competent authorities to cooperate and coordinate with each other within the scope of their mandate¹². In 2007, the AGCM has signed a cooperation agreement with the Central Bank of Italy with the objective of facilitating the exchange of confidential and non-confidential information in relation to the parallel assessment of mergers in the banking sector. Indeed, cooperation was important during the first wave of mergers in the sector (2006-2009) and it is expected to intensify again, in light of the more recent consolidation process.

⁹ In 2016, the number of bank branches was reduced by 4.1 per cent to around 29,000, 15 per cent fewer than in 2008. The largest banks have been downsizing for some years but small banks only started to close branches in 2013. See Bank of Italy, Annual Report 2016, Section 13 pages 144 and following, available at: http://www.bancaditalia.it/pubblicazioni/relazione-annuale/2016/en_rel_2016.pdf#nameddest=banking

¹⁰ See Section 20, paragraphs 5 and 5-bis, of the Italian Competition Law, available at: <http://www.agcm.it/en/competition/competition-legislation/1727-law-no-287-of-october-10th-1990.html>

¹¹ The request suspends the review period and the insurance regulator has a period of 30 days to provide its opinion. See Section 20, paragraph 4 of the Competition Law (see link provided in footnote n. 10).

¹² See Sections 20 and 21 of the Law No. 262 of 2005, available at: <http://www.agcm.it/en/competition/competition-legislation/1813-law-no-262-of-december-28th-2005-title-iv.html>

2.3. Financial consumer protection: transparency

14. During the financial crisis and the subsequent economic recession, it became increasingly apparent that the insufficient level of competition in the banking and financial sector was not only due to frictions in the supply side mentioned in the previous sections, but also to rigidities in the demand side. In this respect, the sector enquiries conducted by the Authority in the banking sector had revealed a low customer mobility deriving from consumer inertia, high switching costs as well as lack of transparency from sector operators, making very difficult for customers to compare and assess products/services. In particular, it emerged how the mere compliance with transparency provisions was not always sufficient to achieve “substantive” transparency, especially when dealing with financial intermediaries. Several AGCM recommendations to improve transparency and product comparison and facilitate consumer switching have been adopted by the Central Bank, as a result of their fruitful cooperation¹³.

15. Over the last ten years, transparency has become a core principle permeating sector specific as well as consumer protection legislation, in recognition of the importance of customers being able to make informed choices on products tailored to their needs and compare between different intermediaries, in order to limit the risks of informational and contractual asymmetry¹⁴. In Italy, the achievement of this goal has been entrusted to the following authorities:

- the Central Bank of Italy with reference to banking products, such as deposits and credits;
- the financial regulator, CONSOB, with regard to investment products such as shares and bonds;
- the insurance regulator IVASS (formerly ISVAP), with respect to insurance products; and,
- the AGCM as far as unfair commercial practices are concerned, since its mandate also embraces consumer protection competences.

16. Indeed, in 2014 the Italian legislator, when transposing the directive 2011/83/EU on consumer rights, amended the consumer protection law by attributing to the AGCM the exclusive power to intervene with respect to unfair commercial practices even in regulated sectors, subject to the obligation to request an opinion to the competent regulator. This exclusive competence is without prejudice to the competence of the

¹³ For instance, the Authority suggested that a summary indicator (the Synthetic Cost Indicator) should be provided to customers both when first opening an account and over time, in order to enable them to keep track of variations and to compare different offers. This suggestion was followed and in 2010 the Bank of Italy introduced the use of the synthetic cost indicator in secondary regulation, providing that banks had to report this information to the customers on an annual basis. The Authority also advocated several measures to ease customers mobility, such as the elimination of charges for closing an account and easier procedures to transfer a mortgage from one bank to another. For more details, see the AGCM submission to the 2014 *OECD Policy Roundtable on Role Of Competition In Financial Consumer Protection*, available at the following link: http://www.agcm.it/en/component/joomdoc/international/oced/2014_CC-FEB_Financial_consumer_protection.pdf/download.html

¹⁴ In February 2011, the G20 called on the OECD, the Financial Stability Board (FSB) and other relevant international organisations to develop common principles on consumer protection in the field of financial services. The G20 High-level Principles on Financial Consumer Protection were endorsed at the G20 meeting on 14-15 October 2011.

regulators to exercise their powers in the event of infringement of the regulations non constituting unfair commercial practices. Therefore, the Italian institutional framework has envisaged a “dual” system for the supervision on the transparency and correctness of operators in banking, financial and insurance sectors, whereby the AGCM cross-cutting protection of consumers is complementary to the surveillance of the sector regulators on investors/savers.

17. Such articulated institutional architecture inevitably requires cooperation to ensure its effectiveness: for this reason, the 2014 amendments envisage that all the authorities may regulate through memorandums of understanding the enforcement and procedural issues of their mutual cooperation, pursuant to the respective competences¹⁵. Thus, all the regulatory entities involved have entered into memorandums of understanding (MoUs) in the field of consumer protection¹⁶, which will be described below, even before 2014.

18. In 2010, the AGCM signed a memorandum of understanding with the Central Bank of Italy, the financial regulator (CONSOB), the pension funds regulator (COVIP) and the insurance regulator (ISVAP) with the view of promoting joint initiatives to foster financial literacy, mindful of its importance for financial market stability.

19. Cooperation on consumer protection in the banking sector was formally established in 2011, with a MoU between the AGCM and the Central Bank of Italy, committing to: inform one another of the investigations launched and exchange opinions in matters related to these investigations; and holding regular meetings and set up a working group. The ultimate objective of this MoU is to ensure effective consumer protection in dealing with banking and financial intermediaries¹⁷, while promoting the efficiency and consistency of administrative action as well as limiting the burdens on intermediaries for the exercise of supervisory activity.

20. The above mentioned amendments to the consumer protection law has called for closer cooperation and coordination among the authorities in the banking, financial and insurance sectors. The 2011 MoU with the Central Bank of Italy was replaced by a more extensive one signed in 2014 – following up the transposition of the above mentioned consumer rights directive - which includes the communication of potential violations in their respective areas and the set-up of a permanent working group monitoring the implementation and regular monitoring of the memorandum of understanding.

21. A similar action was taken with respect to consumer protection in the insurance markets. In 2013 a MoU was signed between the AGCM and the regulator IVASS, aimed

¹⁵ See Art. 1-bis of Section 27 of the consumer protection law (Legislative Decree n. 206/2005), available at: <http://www.agcm.it/en/consumer-protection/consumer-protection-legislation/1725-legislative-decree-no-206-of-6-september-2005-consumer-code.html>

¹⁶ All the cooperation protocols stipulated by the AGCM can be found at: <http://www.agcm.it/protocolli-di-intesa/>

¹⁷ In the consumer protection law, provisions dealing with the banking and financial sector were introduced in the period 2011-2012. Under Section 21 “Misleading actions”, a new paragraph (3-bis) was added to include among the unfair commercial practices the practice of a bank, credit institution or financial agency making the stipulation of a loan contract conditional on the stipulation of an insurance policy supplied by the same bank, institution or intermediary (Decree Law 201/2011) or on the opening of an account with the same bank, institution or intermediary (Decree Law 1/2012).

at: informing each other of potentially infringing conducts arising from proceedings or pre-investigation phase; mutual exchange of views and advice on matters of common interest; mutual cooperation in advocacy initiatives towards the Parliament or the Government on matters of common interest; joint initiatives in the field of enforcement and market monitoring; and mutual cooperation in consumer protection initiatives and international initiatives.

22. In particular, the MoU envisages that IVASS and AGCM may adopt the following cooperation tools:

- the set-up of working groups to address critical issues related to the car insurance market or to define issues relating to consumer protection, also with a view of forming a common understanding of their respective areas of competence;
- joint inspections; and,
- exchange of confidential and non-confidential information.

23. With the implementation of the directive 2011/83/EU, the 2013 protocol with IVASS was revised, mirroring in part that one with the Central Bank: the new cooperation agreement signed in 2014 envisages the establishment of a permanent working group on the implementation of the agreement itself, with periodic reviews. In addition, two important enforcement cooperation mechanisms have been introduced to ensure a consistent supervisory activity and minimize the administrative burden on companies:

- first, the AGCM is required to ask for an opinion from IVASS (to be provided within 30 days from the request) on any envisaged decision sanctioning unfair commercial practices in the insurance markets;
- second, if the AGCM intends to accept and make binding the commitments presented by an operator to early terminate the proceedings before the Authority for unfair commercial practices, the AGCM is obliged to request an opinion from IVASS (to be provided within 45 days).

24. These mechanisms have so far ensured a consistent and coordinated actions between the two authorities and they have contributed to address market problems in a more effective way, protecting economic agents when acting both as consumers and savers/borrowers.

3. Conclusions

25. After ten years from the financial crisis, Italy has strengthened the institutional framework for the protection of competition and consumers in the banking, financial and insurance sectors, by recognizing the horizontal nature of the competences of the Italian Competition Authority while, at the same time promoting a closer cooperation between the Authority and all the competent sector regulators.

26. Several cooperation agreements or protocols with the regulators have been signed and revised over the last few years also with the aim of *promoting the efficiency and consistency of administrative action as well as minimizing the burdens on financial intermediaries for the exercise of surveillance activity.*