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Competition and Regulation in Professional Services – Note by Italy

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1. Introduction

1. Since its establishment, the Authority (hereinafter also “the Authority” or “the AGCM”) has been granted significant advocacy powers aimed at injecting pro-competitive considerations into public policies with reference to both current and future legislative or regulatory measures. In 2011, the Authority's advocacy powers were significantly increased, granting it the ability to challenge any administrative act contrasting with competition principles before the administrative court. In 2020, the AGCM was entrusted with a new consultative power regarding the assessment of the principle of proportionality on any new legislative or administrative provisions/measures concerning regulated professions.

2. The Authority endeavours to foster a culture of competition through various advocacy interventions, of a consultative and propositional nature, which are addressed to legislators and regulators, both at national and local levels, to ensure compliance to competition principles. Indeed, in a multi-level governance system such as Italy's, regulatory barriers that unnecessarily and disproportionately hinder, limit or restrict competition can be introduced at different government levels (national, regional or local).

3. Advocacy interventions are aimed not only at removing restrictions, but also at suggesting to legislators how to balance competition with other public policies objectives. Such balancing exercise is carried out via the proportionality test. By means of the proportionality test, in particular, it is possible to curtail the introduction of anti-competitive restrictions and to limit their scope to what is strictly necessary to achieve the overriding public interest objectives pursued by the legislator.

4. This contribution outlines the AGCM's experience in dealing with the interaction between competition and professional services regulation and its efforts to foster a competition perspective in this sector, which is essential for economic growth. Section 2 describes the main recent legislative developments; section 3 illustrates the most common restrictions on the access to and on the exercise of professional activities; section 4 examines the main outcome of the impact assessment of AGCM advocacy activities in this sector; section 5 draws some conclusions.

2. Main recent legislative developments in the legislative framework regulating liberal professions

5. In Italy, the initial liberalization of professional services dates back to 2006¹, during which legislative barriers, some of which originated from the early 20th century, limiting access to, and the provision of, professional services were removed. In accordance with EU law principles, the reform was expressly aimed at “*fostering competition and free movement in liberal professions*”². Specifically, minimum fees for professional services, although not abolished, were declared no longer mandatory, thus allowing professionals to lawfully set the price of their services below these levels. Moreover, the advertising of

¹ Decree-Law no. 223/2006, the so-called “Riforma Bersani”.

² Art. 2, Decree-Law no. 223/2006.

professional services was allowed with regard to the qualifications and specialization of the professional as well as the characteristics and price of the services provided.

6. The 2006 reform was followed by a second wave of liberalization of professional services, introduced in 2011 and 2012: in 2011, the freedom to advertise professional services by any means was affirmed, provided that the information communicated to consumers is transparent, truthful, correct, unambiguous, not misleading, nor defamatory³; in the same year, the imposition of minimum distances between any kind of economic activities was prohibited⁴; in 2012, professional fee schedules for any regulated professions were abolished⁵.

7. In 2020, in transposing an EU Directive⁶ requesting a proportionality test before adoption of new regulation concerning professions, the legislator entrusted the AGCM with a new consultative power on new legislative, regulatory or administrative provisions, or amendments to existing ones, that restrict the access to, or the exercise of regulated professions, with a view to ensuring the proper functioning of the market, while guaranteeing a high standard of consumer protection⁷. More specifically, a preventive and mandatory opinion of the AGCM regarding the assessment of the principle of proportionality was introduced before the final adoption of any new legislative or administrative provisions/measures concerning regulated professions (or that modify existing regulations). This new legislative provision is limited to professions that do not have a professional order, while when this kind of regulation is adopted by professional orders, the preventive and mandatory opinion on the principle of proportionality has to be requested to the public supervisory administrations (usually a Minister).

8. This new provision holds particular significance as it grants the Authority a preventive (and proactive) consultative role aimed at ensuring the promotion of a pro-competitive regulatory framework and therefore a better regulation. The failure to request AGCM's opinion could represent a violation of the EU Directive n. 2018/958⁸ and therefore could in principle result in an opening of an EU infringement procedure. This provision is not entirely novel, since it recalls a previous requirement, introduced in 2011, for a mandatory AGCM opinion on "*compliance with the principle of proportionality of draft laws and government regulations introducing restrictions on the access to and practice of economic activities*"⁹. However, despite the existence of this provision dating back to 2011, it has never been applied. Section 4 details the successful result emerging from the impact assessment of this new provision.

³ Art. 3, Decree-Law no. 138/2011, Art. 3, paragraph 5, letter g).

⁴ Art. 34, paragraph 3, letter b), Decree-Law no. 201/2011.

⁵ Art. 9, Decree-Law no.1/2012. Already Art. 34, paragraph 3, letter f), of Decree-Law no. 201/2011, entitled "Urgent provisions for growth, equity, and the consolidation of public accounts" (the so-called "Save Italy Decree") expressly repealed minimum prices, commissions and/or tariffs for the supply of goods or services.

⁶ Directive (EU) 2018/958 of the European Parliament and of the Council of 28 June 2018.

⁷ Art. 3.3, Legislative Decree no. 142/2020.

⁸ Directive (EU) 2018/958 of the European Parliament and of the Council of 28 June 2018.

⁹ Art. 34.5, Decree-Law no. 201/2011.

9. In 2021, the Italian National Recovery and Resilience Plan (NRRP)¹⁰ envisaged a series of liberalisation and simplification measures aimed at facilitating market access for a number of regulated professions. Several of these initiatives are currently in an advanced stage of implementation:

1. reforming university degrees for specific professions (implementing reform 1.6 of the NRRP). In order to speed up the entry of graduates into the labour market, access to certain regulated professions has been simplified, eliminating the need for a State examination following the university degree. These professions include: chemist, physicist, biologist, pharmacist, veterinary, dentist, technical professions for construction and land use, agricultural, food and forestry professions, technical industrial and information professions¹¹. The underlying idea of the reform is to convert the final university dissertation into an evaluation to ascertain the technical-professional skills necessary for practicing the profession. Therefore, future graduates will be able to engage in professional practice promptly, bypassing the waiting period typically associated with preparing for and passing the State examination;
 2. within the reform titled “Good administration and simplification” (implementing reform 2.2 of the NRRP), whose objective consists in eliminating bureaucratic red tape and reducing the administrative costs of starting economic activities, 45 craft professions were identified for which the licence required to initiate, suspend or terminate an activity was abolished. These professions include: carpenters, bricklayers, painters, tilers and decorators, tailors, graphic designers, audio technicians, party and event organisers, graphic designers, software producers¹². Hence, the reform is intended to eliminate administrative requirements and associated costs, thereby making these activities freely practicable. It is a significant improvement, considering that at the moment carpenters have to meet 78 regulatory requirements and ice cream parlours 72, referring to 21 different public administrations. By the same token, for other activities (as shoemaking, framing, blacksmithing, woodturning, or gastronomy), only essential environmental and safety standards required for the safe operation of equipment are maintained.
10. Nevertheless, despite these remarkable pro-competitive developments, substantial restrictions still persist. It is the case of the “fair compensation”¹³, introduced in 2023 for any intellectual professions, and defined as a compensation “*proportionate to the quantity and quality of work performed, the content and characteristics of professional services provided*”. Although its application is narrowly defined (pertaining only to professional relationships involving the provision of intellectual services to: banking and insurance companies; or companies with more than 50 employees; or companies with annual revenues in excess of EUR 10 million; or public administration and public-owned companies), it could result in a reintroduction of minimum fees. Rules on fair compensation represent a significant barrier to entry for new professionals into the market, with a

¹⁰ The EU-funded instrument aimed to help post-pandemic economic recovery of EU Member States.

¹¹ Law no. 163/2021.

¹² Decree-Law no. 19/2024. The decree is now in Parliament for conversion into law. The intervention contributes to the achievement of the objectives of Mission MIC1-60 of the NRPR, which calls for the simplification within this year of 200 procedures.

¹³ Law no. 43/2023.

substantial impact on the competitiveness of our economy. The Italian Competition Authority has been persistently advocating with several governments over the years for the removal of these restrictions, previously called “minimum fees”, nowadays “fair compensation” (AS1452¹⁴).

3. Main competition advocacy interventions in professional services

11. Competition advocacy interventions in the regulation of professional services have been primarily aimed at removing provisions from the legal framework perceived as disproportionately or unjustifiably restricting the access to and/or the exercise of professional services. Restrictions that have most frequently been addressed by the Authority are the following (distinguished by type of restriction).

3.1. Regulatory entry barriers

12. The promotion of progressive liberalization and market opening, removing legislative or regulatory obstacles that prevent access by new entrants, has always been one of the central *focus* of the Authority’s advocacy efforts, with the aim of fostering competition (both in terms of competing for the market and within the market itself), enhancing efficiency and stimulating innovation. This would benefit not only individual consumers but also the overall economic system.

13. Such efforts target unjustified restrictions on access that are deemed unnecessary, or disproportionate to the pursuit of a relevant public interest. These include barriers such as:

1. restrictions on the number of operators (quantitative restrictions). Measures like minimum distance requirements or reserved activities can artificially limit competition by creating barriers to entry for new players. By challenging those restrictions, the Authority seeks to create a level playing field that allows a greater number of operators to enter the market, fostering healthy competition and innovation;
2. disproportionate/ unnecessary requirements for access to the profession (qualitative restrictions). This may involve unnecessary hurdles such as mandatory attendance at specialized courses or licensing examinations that are not directly relevant to ensuring the competence/expertise or quality of professionals.

14. The overarching goal pursued by the AGCM is to ensure that access to markets is fair and open, enabling a dynamic environment where professionals can compete on merit and innovation rather than being hindered by unnecessary regulatory burdens that unduly and/or artificially restrict the supply structure. This approach not only benefits professionals but also ultimately leads to better outcomes for consumers/customers through increased choice, improved quality and lower prices.

15. As for **quantitative restrictions**, in cases of reserved activities with a predefined number of professionals (numerus clausus), such as for the notary profession (AS901¹⁵,

¹⁴ In Boll. no. 45/2017.

¹⁵ COMPETITIVE REFORM PROPOSALS FOR THE PURPOSE OF THE ANNUAL MARKET AND COMPETITION LAW - YEAR 2012, in Boll. SUPPL/2011.

AS988¹⁶ and AS1807¹⁷), the Authority advocated for the adoption of measures to facilitate the entry process, namely to promptly filling the vacancies. These measures include: organizing new selection processes, revising the quantitative limits to the access to the profession based on factors such as resident population as well as other criteria used for planning the geographical distribution of notary positions (such as the amount of business, annual income, population distribution, aimed primarily at protecting and crystallising existing/current market positions). By opening up opportunities for new entrants to compete for positions, the Authority aims to ensure a fair and transparent process that promotes access to the reserved profession of notary, ultimately benefitting both new professionals and consumers.

16. In various instances, the Authority has addressed limitations imposed on the number of authorizations for certain activities, particularly in the context of motor vehicle consultancy activities (AS1639¹⁸, AS1591¹⁹, AS1572²⁰, AS1439²¹) and of port chemical consultant (AS1878²²). The Authority has stated that numerical limitations on access, often based on criteria like the number of vehicles registered in a specific territory, are not strictly necessary and/or proportionate to the pursuit of general interest objectives. Such numerical limitations distort competition, preventing new professionals from entering the market and limiting rivalry among existing ones.

17. The Authority has been actively involved in advocating against the imposition of minimum distances in various activities (AS1554 on the regulation of opticians²³, AS1496 relating to car practice agencies and driving schools²⁴, AS1130 and AS1056 on tobacco retailers²⁵, AS1928 on car rental activity²⁶), resulting from the public authorities' attempt to predetermine an "optimal" supply structure based on presumed demand needs. The Authority has pointed out that the provision of minimum distances conflicts with the principles of liberalization and competition outlined in national and European legislation and prevents the market from adjusting to consumer demand. A predetermined artificial balance between supply and demand limits the ability of economic operators to respond effectively to consumer preferences, competing on the merits, ultimately benefitting consumers through greater choice, better services, and potentially lower prices.

¹⁶ COMPETITIVE REFORM PROPOSALS FOR THE PURPOSE OF THE ANNUAL MARKET AND COMPETITION LAW - YEAR 2013, in Boll. no. 38/2012.

¹⁷ STAFF PLAN OF NOTARIES-FILLING VACANCIES AND REVIEWING, in Boll. no. 50/2021.

¹⁸ CONSULTING ACTIVITIES FOR TRANSPORTATION MEANS, in Boll. no. 2/2020.

¹⁹ CITY OF PALERMO - ISSUANCE OF LICENSES FOR AUTOMOTIVE CONSULTING ACTIVITIES, in Boll. no. 26/2019.

²⁰ AMENDMENTS TO DPR NO. 358/2000, in Boll. no. 13/2019.

²¹ In Boll. no. 42/2017.

²² In Boll. no. 4/2023.

²³ In Boll. no. 2/2019.

²⁴ In Boll. no. 14/2018.

²⁵ In Boll. no. 23/2014.

²⁶ In Boll. no. 46/2023.

18. Concerning qualitative restrictions, the Authority considered excessively restrictive measures requiring the owner of travel agencies to pass a specific licensing examination. In the Authority's view, there was no significant information asymmetry between consumers and economic operators in this sector that could justify a restriction of competition based on the imposition of specific licensing examination. The lack of substantial information asymmetry suggests that consumers were adequately equipped to make informed decisions without requiring the operators to pass a stringent licensing exam. Therefore, the imposition of such preliminary exam could be viewed as an unnecessary restriction on competition (AS1596 concerning the regulation of travel and tourism agencies²⁷).

19. Further qualitative restrictions can be identified in mandatory enrolment in professional lists or registers for activities that do not involve public interests, particularly when the quality of these services is already ensured through selective access procedures. According to the AGCM, mandatory registration in a professional register should be deemed exceptional, limited to professions offering services that could potentially result in consumer damages/disadvantages or where there exists another specific and substantial public interest to safeguard. Moreover, compulsory membership may not be directly related to ensuring quality or professionalism in the provision of professional services. Therefore, in the absence of significant public interests, the Authority concluded that the mandatory registration requirement to practice a profession imposes unnecessary burdens on professionals, limits their ability to operate independently, unjustifiably protecting the interests of the incumbents, and restricts the choice for consumers. Nonetheless, consumer protection requirements can still be addressed through quality certification systems based on mechanisms that are less restrictive on competition. For instance, advertising educational and professional qualifications can represent a less restrictive alternative (AS460²⁸ and AS541²⁹ regarding the profession of mountain guide, AS456³⁰ and AS1350³¹ regarding tourist guides and travel agencies, AS1250³² and AS1449³³ the profession of cave/speleological guide).

3.2. Restrictions on the exercise of professional activities

20. The Authority has actively advocated against measures restricting the exercise of professional activities which are unnecessary and/or disproportionate to protect public interest objectives. Such constraints include: minimum prices or tariffs for goods or services provided, restrictions on advertising or other organisational constraints (such as compulsory membership in a professional organization).

21. Professional associations have shown reluctance in internalising the changes in the legislative framework with regard to the abolition, as a first step, of mandatory minimum fees and, at a subsequent stage, of fee schedules.

²⁷ In Boll. no. 27/2019.

²⁸ In Boll. no. 22/2008.

²⁹ In Boll. no. 23/2009.

³⁰ In Boll. no. 24/2008.

³¹ In Boll. no. 6/2017.

³² In Boll. no. 49/2015.

³³ In Boll. no. 44/2017.

22. The Authority has emphasized on several occasions that minimum fees can impede competition by restricting professionals from autonomously determining prices, thereby effectively undermining a pivotal aspect of their economic conduct. The need to ensure the quality and/or safety of the services rendered to clients/customers does not hold substantial relevance in this respect. Quality and professional standards can indeed be ensured through alternative mechanisms, safeguards, and regulatory oversight, which are equally effective yet less detrimental to competition. Consequently, the imposition of minimum fees is likely to affect the competitive dynamics in the provision of the relevant services (and/or goods) and cannot be justified in the context of balancing the need to protect competition with other potential interests, such as safety protection, measures to ensure the quality of the service provided, etc. (*ex multis*, recent interventions AS1874 concerning fees for motor vehicle overhaul operations³⁴ and AS1933 pertaining to the establishment of a minimum fee for nautical school services³⁵).

23. Additionally, numerous advocacy interventions addressed provisions that impose excessive and disproportionate constraints on the economic activities of professionals, thereby restricting their practice. Such constraints are especially detrimental in markets that stand to gain from the introduction of technological innovations capable of enhancing the quality of services provided to consumers and reducing searching costs (thus, enabling the consumer to make the optimal choice of quality/price combination). For instance, in the urban mobility sector, which is increasingly characterized by the use of digital booking platforms, the AGCM has repeatedly pointed out the restrictiveness of the rule that requires NCCs to return to their parking lot at the end of each ride, urging for the abolition of the competitive discrimination between taxi and NCCs, assuming full substitutability between the two services (AS1222³⁶, AS1620³⁷).

24. As for health professions, the Authority advocated for the removal of unjustified restrictions on advertising, reintroduced by law in 2019. These restrictions have been evaluated by the Authority as neither necessary nor proportionate to the overarching objective of safeguarding consumer health interests. Specifically, the provision that the legitimate content of an “informative communication” which encompasses titles, professional specializations, service characteristics and prices, must also “ensure the safety of health treatments” has introduced a parameter for evaluating communications that is exceedingly ambiguous and vague. Consequently, this vagueness generates uncertainty among professionals regarding the legitimacy of their communications. Likewise, the provision according to which “informative communications” must not contain any element of promotional or suggestive nature appears ambiguous. The Authority highlighted that the constraints imposed on advertising within the health professions sector, which were lifted by liberalization measures, are neither necessary nor proportionate to the broader objective of safeguarding consumer health and safety. Instead, these constraints reintroduce restrictions on competition that unjustifiably curtail professionals’ use of a significant competitive tool, namely advertising, thereby impeding consumers to make more informed

³⁴ In Boll. no. 1/2023.

³⁵ In Boll. no. 2/2024.

³⁶ In Boll. no. 39/2015.

³⁷ In Boll. no. 42/2019.

decisions (AS1716³⁸, AS1574³⁹, and AS1553⁴⁰). Regrettably, this is an example of an unsuccessful intervention, as both the initial draft law and the subsequent legislation remained unchanged.

25. Lastly, the Authority has frequently advocated for the removal of additional restrictions on the organizational structure of professional services. For instance, in the provision of funeral services, the requirements to have a location in a certain territory and/or a minimum number of employees were considered restrictive and disproportionate in relation to the pursuit of objectives of general interest (AS1732⁴¹, AS1644⁴², AS1153⁴³).

26. Overall, the Authority's advocacy efforts aim to endorse a regulatory environment that protects and promotes fair competition, innovation, and consumer choice. By challenging competitive constraints that unjustifiably limit economic activities of professionals, both with respect to entry and to their conduct in the market, the Authority is committed to foster a more dynamic and competitive marketplace, benefiting both professionals and consumers.

4. Impact assessment of AGCM advocacy activity relating to professional services

27. Since 2013, the AGCM has been conducting a systematic *ex-post* annual monitoring activity of its advocacy interventions; the outcomes of these interventions are published in the annual report (and in an enriched version available on the AGCM website). It provides an indication of the extent to which legislators and public administrations, both at a central and local levels, take into account the AGCM advocacy activities. This ongoing monitoring exercise, updated yearly, enables the Authority to closely verify the effectiveness of its advocacy interventions/efforts and to gain better insights into the key factors contributing to successful competition advocacy⁴⁴, thereby facilitating a better targeting of advocacy efforts in relation to the legal instruments used and/or the specific profile addressed⁴⁵.

28. Furthermore, this *ex-post* impact analysis can be used for other purposes, primarily for accountability and/or for assessing the degree of openness of the national legal framework to competition principles, as well as the level of maturity of competition culture within the Italian legal and economic system. The assessment of advocacy activity effectiveness is approached from a "legal perspective" rather than an economic one, focusing on the outcomes of AGCM opinions and recommendations in terms of compliance. Specifically, data are segmented based on the type of advocacy tools used, the

³⁸ In Boll. no. 2/2021.

³⁹ In Boll. no. 13/2019.

⁴⁰ In Boll. no. 49/2018.

⁴¹ In Boll. n. 15/2021.

⁴² In Boll. n. 6/2020.

⁴³ In Boll. n. 43/2014.

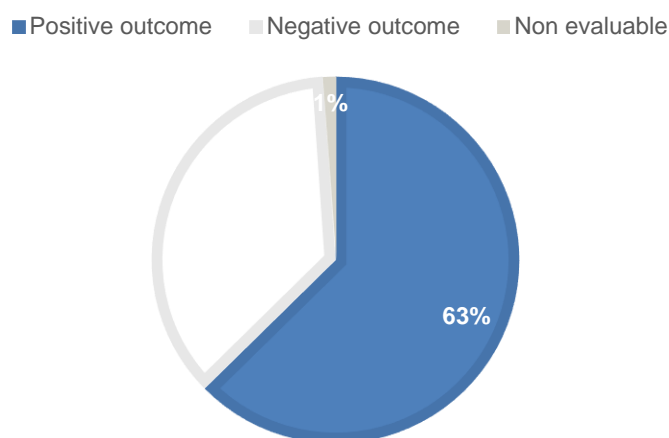
⁴⁴ All the reports and their summary in English are available on the [AGCM website](#).

⁴⁵ For instance, in cases of repeated negative outcomes, this monitoring exercise makes it possible to envisage different solutions that may favour the compliance of the addressee to competitive principles.

public administration involved (central versus local), the origin of the opinion (*ex-officio* or arising from a complaint or request) and the economic sector involved.

29. Focusing on advocacy activities related to professional services over the past decade (2013-2022), the AGCM issued 91 opinions, accounting for over 10% of all advocacy interventions (867). Data indicate that there has been an overall compliance rate of 63% (57 out of 91, including total or partial compliance⁴⁶) with the Authority's advocacy recommendations, compared to a negative outcome rate of 36% (33 out of 91) and 1% deemed not evaluable. Notably, over 20% of negative outcomes concern the reform of the taxi sector, which has traditionally opposed any liberalization initiative.

Figure 1. Advocacy Activities – Professional Services (2013-2022)

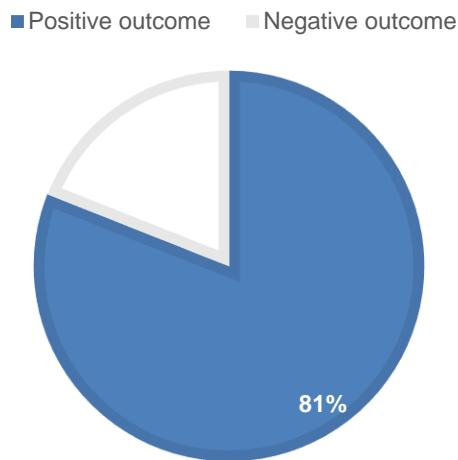


30. The analysis further reveals that the success rate is significantly higher when the advocacy intervention pertains to a draft law, regulation or administrative act (77%) rather than an already established/existing legislative or regulatory provision (50%). This result further proves the importance of a timely, possibly *ex-ante* approach to ensure an effective outcome of AGCM advocacy interventions.

31. Focusing on the impact assessment for the last two years (2021-2022), data demonstrate a trend of overall increasing compliance over time with the Authority's advocacy recommendations regarding professional services. Specifically, the percentage of "successful" opinions reached 81% (22 out of 27), with only 19% (5 out of 27) resulting in negative outcomes.

⁴⁶ This percentage considers when the addressee has fully or only partially met the recommendations issued by the AGCM.

Figure 2. Advocacy Activities – Professional Services (2021-2022)



32. Notably, within the same two-year period, the compliance rate of advocacy on professional services was significantly higher compared to the overall rate of the entire advocacy activity (69%). This substantial increase in the success rate can primarily be attributed to the implementation of the new provision (Legislative Decree n. 142/2020), which, as already mentioned, grants the AGCM an *ex-ante* consultative power in assessing the principle of proportionality in new legislative or administrative acts that restrict the access to or practice of regulated professions (or modify existing ones). Remarkably, the success rate for interventions relating to this new provision stands at 100%, with all 11 opinions resulting in total compliance.

5. Conclusions

33. Competition advocacy activities in the regulation of professional services represented a significant area of intervention in the last decade for the Italian Competition Authority. The guiding principle of AGCM's action has been that public intervention aimed at regulating the access to and/or the exercise of professional activities should be introduced and/or maintained only when the expected benefits are deemed positive, taking into account the costs of regulation and information imperfection and asymmetries that make it difficult for the regulator to achieve the intended result/outcome.

34. By advocating against all the mentioned quantitative and qualitative limitations, the AGCM has used different advocacy tools to foster a more competitive environment that benefits consumers through increased choice, innovation and potentially improved services. Removing unjustified, disproportionate and unnecessary obstacles to the entry and/or exercise of professional activities encourages entrepreneurial behaviour and stimulates market dynamics, leading to overall economic growth and efficiency.

35. The *ex-post* impact assessment of AGCM advocacy activity relating to professional services shows positive results, especially in more recent times, as a consequence of the introduction of the 2020 provision that requires a prior and mandatory opinion by the AGCM regarding the assessment of the principle of proportionality on any new legislative or administrative provisions/measures concerning regulated professions.

36. This EU-derived rule confirms the EU's fundamental contribution in promoting interventions to liberalize and open markets, helping to remove obstacles that still hinder

competitive dynamics, as it has already frequently happened in the past (e.g. with the adoption of the Services Directive).

37. Hopefully, the existence of such new instrument will increase regulators' attention and awareness about the need of including and balancing competitive considerations when adopting economic regulation.