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Working Party No. 2 on Competition and Regulation

Market Studies and other Market Analysis Tools for Competition Authorities – Note by Italy

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This document reproduces a written contribution from Italy submitted for Item 4 of the 80th meeting of Working Party 2 on 3 December 2025.

More documentation related to this discussion can be found at: oe.cd/msmat.

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1. Introduction

1. Since its establishment in 1990, the AGCM has been empowered to conduct general market studies in economic sectors where trade developments, price trends or other circumstances indicate that competition may be impeded, restricted or distorted. The Authority has used market studies as a useful tool to better understand how certain markets or sectors function and assess the state of competition in order to identify market failures or other competition issues that do not directly result from unlawful conduct in violation of competition law. Market studies have led to various outcomes, including advocacy initiatives for policymakers and/or sector regulators and enforcement interventions. The AGCM considers this tool to be a valuable complement to both enforcement and advocacy, rather than a substitute.

2. In October 2023, the Italian Parliament granted the AGCM with the power to impose structural or behavioural measures following a market investigation. Specifically, if the Authority identifies competition issues during a market study that hinder or distort the proper functioning of the market to the detriment of consumers, it may not only recommend appropriate legislative or regulatory changes to improve market performance but also impose structural or behavioural measures on the relevant undertakings, even in the absence of any unlawful conduct by market players. These measures can be imposed after giving market players affected by such measures the opportunity to express their views, in compliance with a specific procedural Regulation adopted in May 2024 following a public consultation. To avoid the imposition of measures, undertakings may submit commitments to address the competition concerns identified in the AGCM's market study findings.

3. This contribution is structured as follows: section 2 outlines the AGCM's experience with market studies, focusing on how they have been used, the main objectives pursued, the legal powers available to the Authority and cooperation with sectoral Regulators; section 3 describes the new power to impose remedial measures following a market investigation, focusing on the legal framework, procedural aspects and the first two practical experiences; section 3.5 contains some preliminary reflections on potential benefits and drawbacks; section 4 presents some conclusions.

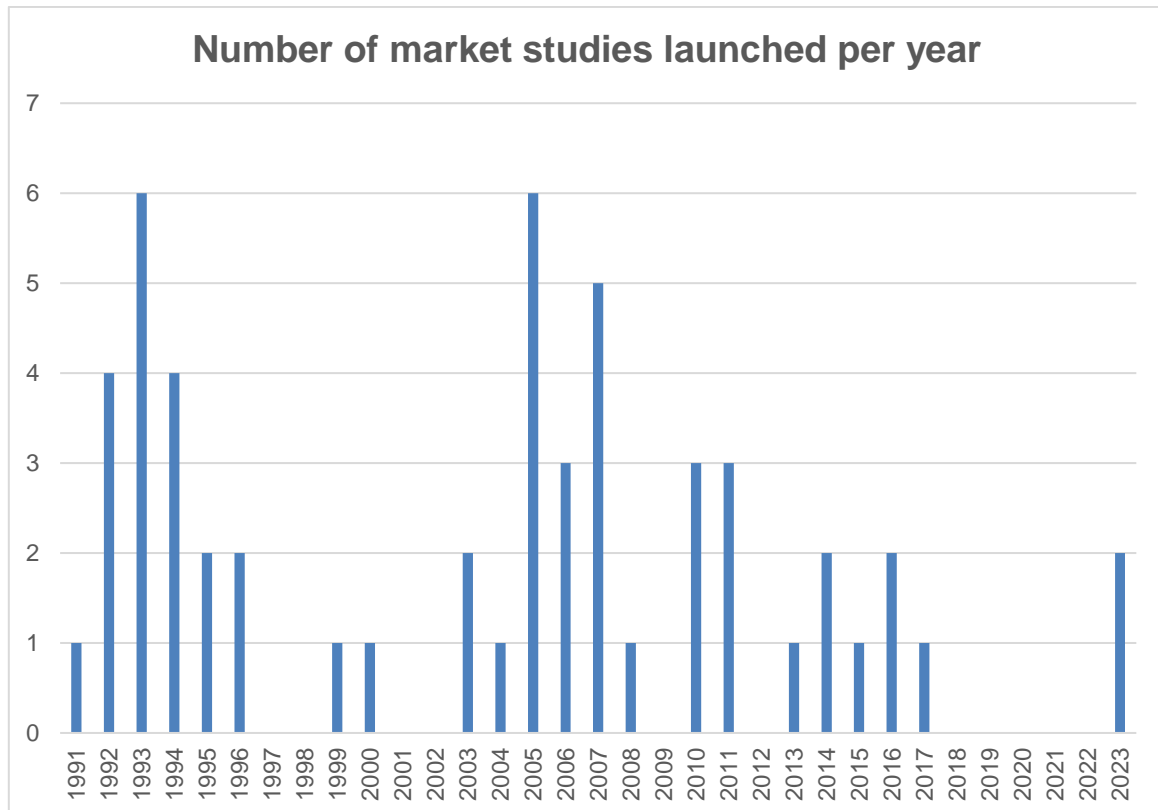
2. “Traditional” market studies (or sector inquiries)

4. Since its establishment in 1990, the AGCM has been empowered to conduct general market studies in economic sectors where trade developments, price trends or other circumstances indicate that competition may be impeded, restricted or distorted either *ex*

officio or at the request of the relevant Ministry.¹ This broad power enables the AGCM to gather significant information and insights into markets affected by competition concerns.²

5. To date, the Italian Competition Authority has concluded 54 sector inquiries, all of which were initiated *ex officio*. However, this tool has not been used regularly over time: as shown in the chart below, its use declined from 2012 onwards, with a new upturn in 2023 after a five-year gap.

Figure 1. Number of market studies launched per year



6. While the coverage of various economic sectors has generally been balanced, some sectors (most notably energy, transport, financial and insurance services, communications, agri-food and fuels) have received particular attention.

¹ Section 12(2) of the Competition Act (Law No. 287/90), which closely mirrors the corresponding EU provision, Article 17 of EU Council Regulation No. 1/2003.

² For a description of the methodologies used for conducting market studies, see the Italian contribution to Working Party No. 3, 20 June 2017, [https://one.oecd.org/document/DAF/COMP/WP3/WD\(2017\)9/en/pdf](https://one.oecd.org/document/DAF/COMP/WP3/WD(2017)9/en/pdf).

Table 1. Covered sectors

Sectors	Number
energy/gas	7
transport (air, rail, local public transportation)	6
banks and financial services	6
communications	5
agri-food	5
fuels	5
healthcare and pharmaceuticals	3
publishing	2
waste management	2
insurance	2
professional services	2
audiovisual	2
digital	1
port services	1
banks and insurance (corporate governance)	1
others	4
Total	54

7. Regarding the main objectives of the AGCM's market studies, these investigations primarily aimed to gain a better understanding of sectors facing competition-related concerns. In particular, the focus has been on markets characterised by the presence of an incumbent operator (typically in cases of recent liberalisation, such as for communications, energy, waste, transport, and postal services), markets exhibiting abnormal retail price dynamics (for example, insurance, banking and financial services, and hearing aids), markets affected by legislative, regulatory, and/or structural barriers to effective competition (for example, professional associations and fuels), or sectors marked by specific vertical supply-chain relationships or dynamics (for example, agri-food, publishing, and pharmaceuticals).

8. Market studies have contributed to identifying the nature of the underlying problems in all these sectors – whether they stem from regulatory constraints, inefficiencies or anti-competitive behaviour – and determining the most suitable course of action. The outcome of market studies has generally taken the form of advocacy initiatives addressed to central or local legislators, policymakers and/or regulators. In only a few earlier cases did the findings directly lead to the identification of market conduct relevant from an antitrust perspective, resulting in the opening of investigations to ascertain possible violations.³

9. The legal powers available to the Authority in the context of market studies are similar to those exercised in a formal antitrust investigation. Therefore, the Authority may request information or documents, order inspections,⁴ obtain expert testimony, statistical and economic analyses, as well as consult experts.⁵

³ IC 1 Ready-mixed concrete sector in 1993 and IC 14 Pharmaceutical sector in 1997.

⁴ More specifically, inspections were carried out in the following market studies: IC 2 Milk sector (1994); IC 10 National air fares (2003); IC 50 Vaccines for human use (2016).

⁵ IC 23 TV markets (2004), the Authority appointed a consultancy company and a university engineering expert.

10. However, in the past, the AGCM did not have the power to impose sanctions for failing to respond to request for information or documents. As a result, acquiring information depended on recipients' willingness to cooperate, sometimes making it difficult to obtain all the necessary information. As will be explained in the next section, which focuses on the AGCM's new powers in the context of market investigations, failure to reply to the AGCM's request for information or the provision of incorrect, incomplete or misleading information may now result in fines being imposed.⁶

11. Decisions to open and close of a market study are published in the AGCM's Bulletin and on its website. The full final report, which is often very long, has always been published, even though this is not expressly required by the Competition Act but rather left to the AGCM's discretion.⁷

12. In regulated sectors, sector inquiries have sometimes been conducted in close cooperation with the relevant sectoral regulator, for instance in the fields of energy, transport, banking and financial services, and insurance.⁸

13. Cooperation with regulators is essential when dealing with regulated sectors in order to understand the markets and how they function; such cooperation can sometimes result in joint initiatives. For instance, in 2019, the AGCM concluded a joint market study with the Communications Authority (AGCOM) and the Data Protection Authority. This study explored the main issues arising in the collection and use of consumer data from different perspectives. The aim was to strengthen complementarities among the authorities and to identify and reconcile potential trade-offs (see Box 1).

Box 1. Sector inquiry on Big Data

The objective of this market study was to explore the main issues arising in the collection and use of consumer data from different perspectives, in order to strengthen complementarities and to address specific critical issues lying at the intersection of the different areas of competence and to recognise and reconcile possible trade-offs. During the market study, relevant legal and economic literature was reviewed and incorporated into the analysis to provide a sound theoretical framework. The AGCM held hearings with academic experts and gathered contributions from numerous market operators active in sectors such as telecommunications, media, digital platforms, information technology, insurance, and banking. These hearings were supplemented by several requests for information. Finally, the Authority conducted an online survey on a sample of more than 2,000 Italian users to analyse the non-monetary relationship between users providing personal data and companies offering digital services. The final report, which summarises the findings of the market study and is structured into five chapters. It provides guidelines and policy recommendations for legislators. It also includes a commitment by the three Authorities to establish a permanent cooperation mechanism

⁶ Section 1(5) of Law Decree No. 104 of 10 August 2023, as converted by Law No. 136 of 9 October 2023, the so-called "Asset Decree"

⁷ Section 26 of the Competition Act.

⁸ IC 17 Financial services, in cooperation with the Central Bank (1997); IC 22 Electricity and natural gas enquiry, in cooperation with the Energy regulator (2004); IC 48 Broadband networks, in cooperation with the Communications regulator (2014).

designed to enhance synergies between competition enforcement and regulation in relation to the impact of Big Data on businesses, consumers, and citizens.

3. Market investigations (New Competition Tool)

3.1. The legal provision and its interpretation

14. In October 2023, as part of a series of provisions relating to the protection of competition and consumers in the aviation sector, the Italian legislature granted the AGCM “new” tools to address competitive concerns. In particular, the AGCM was entrusted with the power of adopting, following a market study identifying competition concerns, “*any necessary and proportionate structural or behavioural measures*” addressed to the undertakings concerned, “*aimed at removing such distortions of competition*”. Such measures must comply with the principles of the European Union legal system and are adopted after consulting the market.⁹

15. Furthermore, according to the same provision, during a market investigation, “*the undertakings concerned may submit commitments capable of removing the anti-competitive concerns and the resulting harm to consumers. In such a case, the Authority, having assessed the suitability of the commitments and after consulting the market, may make them binding on the undertakings by means of the decision closing the market investigation*”. The Authority may also recommend appropriate legislative or regulatory initiatives in order to improve the functioning of the affected markets.

16. In November 2023, the AGCM requested an opinion from the Council of State (the Supreme Administrative Court) on the scope of these powers. Specifically, it asked whether they should be regarded as limited to the air transport sector or whether they could be applied without restriction. In its Opinion delivered in January 2024, the Council of State clarified that such powers apply “*without sectoral or product-market limitations, to all areas in which the AGCM decides to exercise its powers in the context of a market investigation, provided that the relevant conditions and requirements are met*”.¹⁰

17. These powers are a novel addition to the Italian legal system, complementing the traditional antitrust enforcement toolkit: as the Council of State highlighted, they enable effective competition to be restored in contexts where “*the weakening of competition between operators and the resulting loss of consumer welfare do not stem from concerted strategies or regulatory restrictions, but from the structure of the market itself*”.¹¹

18. Unlike what was envisaged for “traditional” market studies, as mentioned above, the investigative powers are now backed by fines of up to 1% of the total worldwide turnover recorded in the preceding financial year can now be issued for failure to provide the requested information or documents or for the provision of incorrect, incomplete or

⁹ Section 1(5) of Law Decree No. 104 of 10 August 2023, as converted by Law No. 136 of 9 October 2023, the so-called “Asset Decree”.

¹⁰ Council of State, Consultative Section I, Opinion No. 61 of 29 January 2024.

¹¹ Council of State, Consultative Section I, Opinion No. 61 of 29 January 2024.

misleading information. Periodic penalties of up to 5% of the average daily worldwide turnover in the preceding financial year can also be issued for each day of delay.¹²

19. While market studies used to be conducted by the same directorates responsible for antitrust enforcement, the AGCM's reorganisation, which came into effect on 1 January 2023, established a Directorate to deal exclusively with sector inquiries. This demonstrates the importance that the AGCM has chosen to give to market studies.

3.2. Procedural aspects

20. The possibility of imposing remedial measures (whether behavioural or structural) on undertakings has made it necessary to establish more precise procedural rules in order to better guarantee full compliance with the rights of defence in the context of adversarial proceedings.

21. Therefore, in order to better define the scope and procedures for applying these new powers, in May 2024 the AGCM adopted a procedural Notice,¹³ following a market consultation. Firstly, the AGCM clarified the scope of application of the new powers. In this regard, and "*within its discretion, the Authority shall prioritise the exercise of the new powers introduced by the Asset Decree - particularly the adoption of remedial measures - in cases where the competition issues hindering or distorting the proper functioning of the market to the detriment of consumers are considered both significant and persistent*".

22. The Notice clearly distinguishes between two phases, albeit within the same proceedings: an initial phase of studying and analysing the sector. This may lead to a second remedial phase if competition issues are identified. In this phase, the parties involved are identified and remedial measures are defined. Alternatively, if the parties propose commitments, these can be accepted and made binding.

23. The primary aim of the first phase is to collect information: it seeks to assess the overall functioning of a given market or sector where impediments to competition appear to exist. This phase is similar to a "*traditional*" market study, albeit with some procedural innovations designed to increase opportunities for consultation and participation of interested parties, as well as enhancing procedural transparency. Specifically, the main procedural innovations concern:

- the designation of a case handler responsible for the procedure in the decision to open the market study, published in the AGCM's Bulletin and on its website;
- the possibility of calling for input from the outset;¹⁴
- the setting of a deadline for concluding this first phase;
- the possibility of publishing a Preliminary Report, presenting the results of the fact-finding activities, on which the AGCM invites interested parties to provide feedback. At this stage, the Notice provides for comments to be collected from the

¹² Section 1(5) of Law Decree No. 104 of 10 August 2023, as converted by Law No. 136 of 9 October 2023, the so-called "Asset Decree"

¹³ AGCM, *Notice on the enforcement of Section 1(5) of Law Decree 104 of 10 August 2023, converted with amendments by Law 136 of 9 October 2023*, adopted on 7 May 2024.

¹⁴ Although not required by law, calls for input have already been used in the past (IC 50 Market for human use vaccines and IC 55 Market for hearing aids).

relevant Regulator if the market or sector under investigation falls within the scope of its activities.

24. This first phase can lead to one of four outcomes:

- closing the procedure with no evidence that competition concerns are hindering or distorting the proper functioning of the market to the detriment of consumers, and that these concerns could be adequately addressed by the provision of remedial measures;
- advocacy initiatives, recommending appropriate legislative or regulatory changes aimed at improving the functioning of the affected markets;
- the opening of enforcement proceedings where there are reasonable grounds to suspect an infringement of either competition rules or consumer protection rules;
- the opening of the remedial phase, with the adoption of a specific act referred to as the “Market Investigation Findings”, which is published in the AGCM’s Bulletin and on its website, and notified to the undertakings that may be affected by the remedies.

25. In relation to this second phase, the MIF should specify:

- the competition concerns that could hinder or distort the proper functioning of the market to the detriment of consumers;
- the types of measures that the Authority considers necessary, proportionate and capable of addressing the identified competition concerns, on the basis of a *prima facie* assessment;
- the undertakings concerned that are potential addressees of the remedial measures;
- the time limit (at least 45 days) for interested parties to submit written documents, for the undertakings concerned to exercise their right to be heard, and for commitments to be submitted.

26. The undertakings in question and any other interested parties may submit written observations. The undertakings concerned also have the right of access to the case file and the right to be heard by the AGCM’s Board. During the same hearing, in order to ensure transparency and participation in the decision-making process, the Board may hear other parties admitted to the proceedings if they have submitted a duly reasoned request. Finally, in this second phase too, the procedural Notice provides for a consultation with the sector-specific Regulator, who must be required to issue a non-binding opinion.

27. After reviewing the findings of the market investigation and considering the submissions made by the undertakings concerned, the Authority may decide to impose structural or behavioural measures. In this case, the Authority shall adopt a formal decision to notify the undertakings concerned of the measures and to publish them in the AGCM’s Bulletin and on its website.

28. The aforementioned procedure demonstrates that the second phase provides several opportunities for the participation of undertakings that may be affected by the remedial measures: the procedural guarantees ensure the full protection of the right of defence. Moreover, the mandatory consultation of the competent Regulator and, where appropriate, other interested parties should contribute to the definition of proportionate, necessary and effective remedial measures.

3.3. First practical experiences

29. So far, the AGCM has launched two market investigations, both of which are still ongoing, using its new power to impose behavioural or structural remedies; the first, initiated in November 2023, concerns the use of pricing algorithms in airline fares on domestic routes to and from the two largest Italian islands, Sicily and Sardinia; the second, opened in September 2024, focuses on the school publishing markets. The Authority initiated these sector inquiries primarily to gain a detailed understanding of the anomalous price increases observed in these two sectors (namely, the high cost of flights for certain periods and destinations and the rising prices of school textbooks), as well as of other factors affecting consumer demand.

3.3.1. Market investigation on pricing algorithms in passenger air transport on domestic routes to and from Sicily and Sardinia

30. The first market investigation aimed to (i) verify the extent to which pricing algorithms are used in revenue management systems, their characteristics, and their potential restrictive effects on competition; (ii) ascertain whether companies apply price differentiation and personalisation policies through the use of algorithms, to the detriment of consumers, in the context of ticket booking; and (iii) assess whether pricing and display mechanisms are transparent and allow consumers to effectively compare competing offers.

31. In December 2024, the AGCM published its preliminary report¹⁵ and invited stakeholders to provide their feedback. The study found that all airlines use pricing systems that dynamically adjust ticket prices over time depending on various factors, such as the aircraft load factor and the time between ticket purchase and flight date (revenue management system). However, the pricing systems used by different carriers seem to vary in terms of their operating rules, the number and characteristics of the algorithms used, the input processed, and the frequency and type of manual interventions by analysts. In short, different carriers use different pricing policies. The price analysis was based on actual airline ticket prices. This data was processed by a University research centre and comprised over 23 million records relating to airline tickets sold in 2023, as well as approximately 12 million records from 2019 (used to assess market developments before and after the pandemic).

32. As for the possible existence of customer profiling and price personalisation practices, the investigation employed two main techniques: scraping audits (which involved acquiring prices for flights and ancillary services directly from airline websites) and sock-puppet auditing (which involved implementing computer programs to simulate different user profiles). These techniques are among those the algorithm investigation tools identified by the OECD.¹⁶ The analysis did not reveal any customer profiling practices based on information acquired during users' online sessions, such as the type of device or operating system used (PC or phone, Apple or Android) or the geographical location of the connection, or the consumer's browsing history (i.e., whether they had previously searched for flights using the same device).

33. Finally, the preliminary report raised concerns about the lack of transparency and comparability of air fares for consumers, particularly with respect to the pricing of ancillary services, such as seat selection and baggage options (carry-on or checked baggage). This

¹⁵ https://www.agcm.it/dotcmsdoc/consultazioni/IC56_Rapporto_preliminare.pdf

¹⁶ OECD (2023) *Algorithmic Competition*, in *OECD Competition Policy Roundtable Background*, www.oecd.org/daf/competition/algorithmic-competition-2023.pdf

lack of clarity may distort customers' decisions, increase search costs and reduce the incentive to compare offers. It may also negatively affect competition by limiting demand mobility.

3.3.2. Market investigation on the school educational publishing markets

34. The second market investigation focuses on the school publishing sector, encompassing publications and teaching materials for primary and secondary school students and teachers. This sector is worth around one billion euros per year in Italy, affecting seven million students and their families, as well as one million teachers. The aim of this market investigation is to examine the competitive dynamics of the affected markets and a number of critical issues, such as: price trends, frequent changes in editions, procurement and distribution difficulties, and the inflexibility of textbook selection. The investigation also considers the technological innovations in the sector, particularly the integration of paper and digital formats and the ownership rights for digital editions.

35. In July 2025, the AGCM published its preliminary report¹⁷, which identified several issues of concern. More specifically, the digitisation of the sector has required substantial investments from publishers, resulting in a market dominated by a few large companies: four undertakings cover almost 80% of total sales, while the remaining 20% is fragmented among around thirty smaller operators.

36. Moreover, the adoption of textbooks combining a printed copy with a corresponding digital edition by schools has had a significant negative impact on the development of the second-hand market. The digital edition of the textbook is usually only licensed for temporary use and cannot be transferred. Another critical issue is the high turnover rate of adopted textbooks: over 35% of adoptions change at the beginning of each school year due to the so-called planned obsolescence practices, which further reduces opportunities for textbook reuse. In this regard, the preliminary report proposes the solution of separating updatable content (exercises and supplementary materials) from structural content. This would allow printed editions to be reused and only the digital components to be updated.

3.4. Some preliminary reflections on potential benefits and drawbacks

37. Although limited, the AGCM's experience with this new tool has been very positive so far. Market studies have long been proven to be an effective means of analysing critical sectors, making the Authority's advocacy initiatives more insightful and appropriate, and better targeting enforcement action. The new powers primarily serve to improve the quality of market studies by enabling the Authority to gather a more comprehensive set of information. This is also made possible by the ability to both conduct inspections and request information, with fines imposed in the event of non-compliance or incomplete or false responses.

38. Moreover, the potential risks generally associated with this new tool, including the potential diversion of resources from enforcement activities and an undesirable regulatory drift, have been effectively contained:

- the first risk has been addressed by the legislator itself, which, when granting the new powers, increased the Authority's workforce by ten units to cope with the increased workload;

¹⁷ https://www.agcm.it/dotcmsdoc/consultazioni/IC57_RP-Executive%20Summary_IT_def.pdf.

- the second potential risk has been mitigated by the AGCM through the aforementioned procedural Notice, in which the Authority has provided for the acquisition of a non-binding but mandatory Opinion from the competent regulatory authority in cases involving investigations in regulated sectors or markets, despite the silence of the primary legislation on this matter.

39. A third criticism often raised in relation to this tool concerns the possibility of imposing behavioural or structural remedies irrespective of a finding of a competition rule violation. In this regard, the AGCM has adopted a robust procedural Notice establishing appropriate checks and balances to ensure full transparency, participation and due process. The Notice provides for a public consultation at every key stage of the procedure, granting potentially affected undertakings and all relevant stakeholders, including the competent regulatory authorities, the opportunity to contribute to the design of possible remedies. Undertakings that may be affected enjoy the same rights as in a formal enforcement investigation (such as access to the file, the right to submit written documents and observations at any stage, the right to be heard also before the AGCM's Board, and the possibility to submit commitments, where applicable). As a consequence, undertakings are guaranteed a fully adversarial process in relation to both the competition concerns that led to the remedial phase being opened and to the measures considered appropriate to address these concerns.

4. Conclusions

40. In the AGCM's experience, market studies have long been used as a valuable tool to identify market failures and competition issues, regardless of infringement of competition law, and to gain a deeper understanding of certain markets and sectors. The aim was to use the findings to support targeted advocacy initiatives or enforcement interventions.

41. In August 2023, the AGCM was granted the power to impose "*necessary and proportionate*" remedial measures in cases where "*the weakening of competition between operators and the resulting loss of consumer welfare do not stem from concerted strategies or regulatory restrictions, but from the structure of the market itself*"¹⁸, as clarified by the Italian Council of State. In the aforementioned 2024 procedural Notice the AGCM specified that its intervention would target "*significant and persistent*" competition concerns hindering or distorting the proper functioning of the market. In this respect, the new provision did not introduce a new category of market investigation, but rather filled a gap in the traditional *ex-post* enforcement framework. Indeed, its introduction in Italy, as in other jurisdictions, stems from the realisation that digital markets, along with other sectors of the economy, can exhibit characteristics and dynamics that are challenging to address effectively using traditional antitrust tools.

42. As market investigations are versatile, extensive and far-reaching tools, they must be conducted in accordance with the principles of prudence, transparency and strict proportionality. The AGCM has adopted this approach in outlining a specific procedure involving potentially affected undertakings, relevant stakeholders, and competent Regulators at every crucial stage, with a view to ensuring legal certainty and predictability of administrative action. Although still limited, subsequent practical experience has confirmed the prudent and balanced use of these new powers.

¹⁸ Council of State, Consultative Section I, Opinion No. 61 of 29 January 2024.