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Co-operative Antitrust in Remedy Design – Note by Italy

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1. Under the Italian Competition Act (Law No. 287/1990), the Italian Competition Authority (Authority) enjoys broad discretion in enforcing competition law and assessing remedies in both antitrust and merger cases. In antitrust cases, in addition to imposing administrative fines, the Authority may impose remedies to bring an infringement to an end and restore competition conditions, or it may accept proposed remedies (commitments) without formally establishing an infringement. Such decisions may, under certain circumstances, be reviewed or the proceedings reopened — for instance, where material changes in market conditions occur. In merger control, the Authority may authorise concentrations subject to conditions and obligations, including voluntary proposals, which can subsequently be amended, extended, or revoked to reflect market developments or to ensure that the measures remain appropriate and effective in safeguarding competition.[1] Remedies—structural, behavioural or a mix of both—must be effective, proportionate, and verifiable, ensuring they remove competition concerns without creating new distortions.

2. The principle of cooperation represents an essential component of recent antitrust enforcement, especially when oriented toward correcting market distortions and restoring competition conditions rather than merely repressing unlawful conduct.

3. In recent years, the OECD has repeatedly emphasised that stakeholder participation and inter-institutional regulatory coherence are key factors in improving the quality and effectiveness of public intervention. The effectiveness of corrective measures in antitrust proceedings depends not only on their substantive content but also on the quality of the process leading to their design and implementation.

4. From this perspective, within the legal competition framework, the Authority has developed a consolidated practice that prioritises dialogue, consultation, and cooperation with relevant stakeholders — including undertakings, interested and third parties, and sectoral regulators — in the design of remedial solutions, while fully safeguarding the principles of independence, impartiality and proportionality of its enforcement actions.

5. The Authority's interventions are grounded on systematic stakeholder engagement and institutional cooperation—both nationally and at European level— to enhance the effectiveness, proportionality, and long-term sustainability of remedies, including commitments. Through consultations, information requests, hearings to interested and third parties and market tests, the Authority reinforces the transparency and analytical soundness of its assessments, thereby improving the design, implementation, and overall coherence of measures across competition enforcement, market context and sectoral regulation. In cases involving cooperation with regulators, such interaction has also contributed to strengthening and accelerating pro-competitive regulatory reforms.

6. While the Authority's practice is primarily illustrated in the context of commitment decisions and conditional merger clearances, it can also inform the design and assessment of corrective measures in antitrust infringement proceedings. Within the legal framework governing remedies, proportionality continues to be essential when designing measures—particularly in markets characterised by dynamic competitive failures—while requiring a

[1] Legal references: the Competition Act Article 14-bis (measures to terminate antitrust infringements), Article 14-ter (commitments and reopening of proceedings), Article 18(3) (conditional merger clearances and subsequent modification or revocation) and Article 19 (revocation for non-compliance).

forward-looking interpretation to ensure that the intervention effectively restores competition.

7. This note aims to illustrate the Authority's approach to the assessment and definition of remedial solutions in antitrust and merger proceedings by analysing: i) the legal framework and substantive principles (§1); ii) the procedural aspects and practice in antitrust cases (§2), with a focus on the market test mechanism governing third-party participation and cooperation with sectoral regulators; iii) the procedural aspects and practice in merger control (§3); and finally, iv) examples of cross-border cooperation within the framework of the European Competition Network (ECN) (§4).

1. Legal framework under the national Law, the Authority's technical discretion and interested third parties' participation

8. In line with the Italian competition law framework (the Competition Act, i.e. Law No. 287/1990) the Authority, when exercising its enforcement powers, enjoys wide discretion in determining the most appropriate course of action.

9. In antitrust cases, the Authority may decide to pursue the investigation, adopt a finding of infringement, impose administrative fines where it considers that such a decision would better serve the public interest. Accordingly, the acceptance of commitments or a remedy decision remains a discretionary tool, rather than a mandatory outcome of the proceedings. Specifically, Article 14-bis of the Competition Act empowers the Authority, where it has established an infringement, to order the undertaking to bring it to an end and to impose any measures necessary to eliminate its effects. Conversely, Article 14-ter of the Competition Act enables the Authority to make binding the commitments offered by the undertakings concerned, without formally establishing an infringement — thus providing a negotiated and preventive solution.

10. As regards merger review, under Article 18(3) of the Italian Competition Act, the Authority may authorise a concentration subject to conditions and obligations — including commitments proposed by the notifying parties — where such measures are deemed appropriate to remove the competition concerns identified, thereby granting conditional clearance for the transaction.

11. Remedies, whether imposed on the Authority's own initiative or voluntarily proposed by the undertakings during the investigation[2], may be structural, behavioral or a mix of both.[3]

12. It should be noted that, under the general principles of transparency, participation, and due process, any party holding a qualified interest may intervene in administrative

[2] In the contribution we will refer to remedies in border terms: whether imposed by the Authority or voluntarily proposed by the undertakings. In this perspective, remedies can be structural (e.g. divestitures, access to infrastructure) or behavioural (e.g. transparency obligations, bans on exclusivity clauses, and neutrality in data use). Conduct remedies can be positive/declaratory or negative/prohibitory, depending on whether the remedy requires the undertaking to do or to cease doing something or both. Cease-and-desist order may require the undertaking to stop the abusive behaviour with the aim of restoring a level playing field. The measures are adopted through an administrative decision and non-compliance with the same is subject to fines.

[3] See Global Forum on Competition on Ex-Post Assessment of Merger Remedies – Contribution from Italy - Session IV 2023.

proceedings and submit written observations.[4] At the sectoral level, the Italian Competition Act incorporates these general principles into competition law, thereby creating a coherent framework that enshrines broad third-party participation in the Authority's proceedings. This framework enables the Authority to gather and aggregate information and evidence from the market. The interplay between **investigative powers and participatory rights** reinforces the principles of transparency and cooperation underlying the Authority's proceedings ensuring that the fact-finding phase is not unilateral and confined to parties under investigation, but open to contributions from parties whose interests may be affected by the final decision.[5] It is worth noting that the decision to open proceedings is made public, thereby enhancing transparency and providing early insight into the main competition concerns under examination.[6] Under this framework, the Authority is able to gather and aggregate information and evidence from the market, conducting a more transparent, informed, and effective assessment of the suitability of the remedies, including commitments, to eliminate the competition concerns identified during the investigation.

13. The Authority enjoys a degree of technical and administrative discretion when considering trade-offs between commitments (or conditional authorisations in merger cases) and prohibition decisions. This discretion extends beyond the mere acceptance or rejection of the proposed remedies, and include the ability to shape the measures deemed most appropriate to address the identified competition concerns. This technical-administrative discretion of the Authority is recognised by the administrative courts, which may review the Authority's decisions only for manifest illogicality, errors of assessment and factual inaccuracies, or defects in reasoning.[7]

14. Under Italian competition law, there are mechanisms—both in antitrust enforcement and in merger control—to review or adjust remedies and commitments when market conditions evolve. Although the procedures differ, provisions aim at ensuring that measures remain appropriate and effective in light of changing competitive dynamics.[8]

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[4] See Articles 2, 9 and 10 of Law No. 241/1990 (*Legge sul procedimento amministrativo*). Specifically, Article 9 provides that "*any person holding public or private interests, as well as associations or committees representing collective interests, who may be adversely affected by the administrative decision, shall have the right to intervene in the proceedings*." Article 10 further grants intervening parties the right to: access the documents of the investigation (except in cases of confidentiality under Article 24); and submit written observations and documents, which the administration is obliged to consider if relevant to the subject matter of the proceedings.

[5] Under Articles 14 and 15 of Law No. 287/1990 and Articles 14 and 15 of the Authority's Regulation on Proceedings (2022), the Authority may issue requests for information (RFIs), hold hearings, and conduct inspections not only on the undertakings under investigation but also on third parties—such as customers, suppliers, or competitors—holding relevant evidence. These powers secure a comprehensive evidentiary basis, while third-party participation plays a functional role: responses to RFIs and observations provide insights into market dynamics and the effects of the conduct or proposed commitments.

[6] The publication is a mechanism that gives practical effect to the participatory rights enshrined in Articles 9 and 10 of Law No. 241/1990, informing interested market participants and providing them with the possibility to submit observations or evidence within a set time frame.

[7] See in particular the Council of State VI (e.g. judgments No. 3590/2012, No. 833/2019) and the First instance Court (TAR Lazio) ruling (e.g. No. 4519/2020), see also First Instance Court (TAR Lazio), Judgment No. 2437/2014 – RTI/Diritti Calcio, which acknowledged the Authority's technical discretion in assessing the suitability of commitments.

[8] In antitrust proceedings, commitments are generally final, though the Authority may reopen a case in narrowly defined circumstances—such as material changes in market conditions—pursuant to

15. In sum, the legal framework allows for a degree of adaptability in the enforcement of remedies.[9] The Authority's practice—illustrated below—has developed mainly in the context of commitment decisions and conditional merger clearances, but it can also inform the design and assessment of corrective measures in antitrust infringement proceedings. It aligns with recognised best-practice principles for effective remedy design, which include: adequacy of the measure to the aim of the intervention; proportionality; implementability and verifiability, in order to preserve or restore a level playing field and be coherent with the market context and the sectoral regulation. In prohibition decisions, although deterrence remains a legitimate consideration, proportionality continues to play a central role when designing remedies — structural or behavioral— within the existing legal framework. However, proportionality might also account for the need to ensure that measures restoring competition are effective. This is particularly important in industries characterised by dynamic competitive effects that can reinforce market positions.

1.1. Assessment of Remedies

16. Remedies, including voluntary ones, are designed to eliminate competition concerns and restore effective market conditions, though they differ in legal nature and degree of intervention. The corrective measures, conditions and obligations imposed by the Authority serve deterrent and restorative functions in public enforcement. They aim to restore the competitive process and prevent undertakings from retaining undue advantages gained through anti-competitive conduct, as well as bring the infringement to an end. To this end, the measures must be capable of producing a concrete and causal impact on market distortions rather than operating in the abstract, and they must be proportionate and effectively implementable and verifiable.[10] By contrast, voluntary remedies achieve corrective and preventive effects without a formal finding of an infringement. In this sense, they promote self-compliance, provided they are reasonably capable and proportionate, and do not cause unintended distortions or discriminatory effects. In these cases, the Authority

Article 14-ter. Proceedings can also be reopened where the decision was based on incorrect or incomplete information, or where the commitments were breached. Similarly, for corrective measures under Article 14-bis, amendments or revocations may occur under general administrative principles where justified by public interest or changed circumstances. In merger control, Article 18(3) of the Competition Act expressly allows the Authority to amend, extend, or terminate conditions or commitments attached to a clearance decision, where this is necessary to reflect market developments or to ensure that the remedies remain appropriate and effective in preserving competition.

[9] According to Article 14-bis(2) of the Italian Competition Act, *interim* measures may also be adopted when three core principles are met: *prima facie* evidence of an infringement, a risk of serious and irreparable harm to competition, and a need for timely intervention to prevent the deterioration of market conditions before the conclusion of the investigation. These measures must remain proportionate, strictly limited to what is necessary to safeguard the competitive process, and temporary, pending the Authority's final decision. The adoption of *interim* measures is also governed by general administrative-law principles — proportionality, necessity, urgency, adequate reasoning, right of defence, and judicial review — derived from national Law 241/1990 and administrative case law.

[10] Remedy compliance is generally ensured through mechanisms such as trustees, implementation plans, and periodic reporting.

enjoys broader discretion[11], as voluntary remedies must be sufficient to address the competition concerns identified at the outset of proceedings.[12]

17. In cases of voluntary remedies, the Authority may refuse to accept them when: they are untimely (filed after the procedural deadline); they are manifestly inadequate to address the competition concerns; the case concerns serious infringements (e.g. cartels or exclusionary abuses) where deterrence and legal certainty require a full decision; or there is a public interest in clarifying novel legal or economic issues through a decision on the merits.[13]

18. In line with European principles,[14] the Authority's established practice requires that remedies satisfy the cumulative criteria of **effectiveness** – capability of removing the competition concern and restoring effective competition in a concrete and durable way[15]; **proportionality** – necessity or sufficiency of the measure, given the nature and gravity of the infringement, without creating further inefficiencies or distortions;[16] and

[11] This approach is consistent with EU case law — see Court of Justice, judgment of 29 June 2010, Case C-441/07 P, Commission v. Alrosa, paras. 41 et seq. — confirming that the Commission enjoys broad discretion in assessing and accepting commitments, provided that the measures adopted are proportionate to the objective pursued.

[12] See Council of State ruling No. 873/2022 (in Amazon case). If commitments become binding on the undertaking, they must be implemented within the specified time frame and according to the Authority established terms; if the undertaking fails to do so, the Authority may reopen the proceedings or impose fines.

[13] In relation to the assessment of commitments submitted by undertakings under Article 14-ter of Competition Act, the Administrative Court of first Instance (TAR Lazio) — in its partial judgment No. 12457/2007 and judgment No. 12460/2007, delivered in the Pannelli Truciolari case — first held that "*the provision grants the Authority a discretionary power, to be exercised within the limits of EU law*" (referring to Article 9 of Regulation (EC) No. 1/2003 and Recital 13, according to which "*commitment decisions are not appropriate in cases where the Commission intends to impose a fine*").

[14] Legal basis: Article 7 and Article 9 of Regulation (EC) No. 1/2003 for antitrust cases and Articles 6(2) and 8(2) of the EU Merger Regulation (Reg. 139/2004). See also EU Remedies Notice (2008/C 267/01).

[15] With regard to the principle of effectiveness ("idoneità"), the Council of State has clarified in several judgments that commitments must be effectively and durably capable of addressing the identified competition concerns. In Judgment No. 3740/2013 – Telecom Italia, it held that the commitments offered must effectively and sustainably eliminate the anticompetitive risks. In TAR Lazio, Judgment No. 2437/2014 – RTI/Diritti Calcio, the Court acknowledged the technical discretion of the Authority in assessing the suitability of commitments. In Judgment No. 3740/2013 – Telecom Italia, it emphasised that commitments must effectively and durably eliminate the identified competition concerns.

[16] The principle of proportionality is intended to ensure a proper balance between the public interest in safeguarding competition and the burdens imposed on the undertaking or on the market by the corrective measures or commitments adopted. In Council of State, Judgment No. 1801/2020 – ENEL/Acquedotto Lucano, the Court held that "*the principle of proportionality requires that the corrective measures or commitments accepted by the Authority be appropriate to the objective pursued and not go beyond what is necessary to eliminate the competition distortions identified*." Similarly, TAR Lazio, Judgment No. 11624/2017 – Eni/Italgas emphasised that "*proportionality constitutes a criterion of legitimacy in the exercise of the Authority's discretionary powers, which must ensure a fair balance between the need to protect competition and the burdens imposed on the undertaking*." More recently, in Council of State, Judgment No. 873/2022 – Amazon, the Court

implementability – technical, economical and temporal feasibility and verifiability within a reasonable timeframe.[17] A non-implementable remedy — which is uncertain or purely theoretical — is considered ineffective even if proportionate in principle, as it cannot ensure lasting effective restoration of competition over time.[18]

19. From this perspective, as further detailed below, during its proceedings the Authority may complement the evidence collected during its investigation using procedural instruments that enable the collection of third-party observations and stakeholder contributions, for a more comprehensive assessment of the remedies or commitments. Specifically, in order to gather comments from interested and third parties, including institutional stakeholders, on the relevance and effectiveness of proposed commitments or remedial measures, the Authority may resort to requests for information, hearings, or public consultations (market tests).

20. The rationale behind involving third parties — such as competitors, customers, industry operators, and regulatory authorities — through public consultations or targeted inquiries (RFIs, market surveys, or opinions from sectoral regulators) is multifaceted. It allows the Authority to gain an in-depth understanding of market dynamics, to test on the market the adequacy of proposed remedies in restoring effective competition, to gather comments and alternative proposals, and at the same time to enhance the transparency and legitimacy of the Authority's final decision.[19]

affirmed that "*the Authority may accept commitments only where the proposed measures appear, on the basis of an* ex ante *assessment, to be reasonably capable of removing the competition concerns identified*.". Reaffirming that the Authority is due to verify if proposed measures are sufficient and appropriate to eliminate the concerns. Remedies or commitments must not unduly favour the incumbent or distort competition further, a point reflected in the Authority's practice (e.g. ENI/Italgas, Telecom Italia cases) and in EU law (Article 9 of Regulation 1/2003 and Article 6 of the Merger Regulation).

[17] With regard to practicability, see, by way of example, Council of State, Judgment No. 1801/2020 – ENEL/Acquedotto Lucano, which established that implementability and verifiability are essential requirements for the legitimacy of the decision closing the proceedings. Similarly, in TAR Lazio, Judgment No. 5283/2016 – Sky/Mediaset Premium, the Court stated that "*the practicability and verifiability of commitments constitute necessary conditions for their approval, as the Authority must be able to easily monitor their implementation and effects*." Regarding practicability, consistent with Council of State No. 1801/2020 – ENEL/Acquedotto Lucano and TAR Lazio No. 5283/2016 – Sky/Mediaset Premium, confirmed that remedies must be technically and operationally feasible and subject to effective monitoring.

[18] There is an ongoing debate that calls for reflection, particularly with regard to remedies imposed in rapidly evolving markets, where market dynamics such as network effects and data accumulation can swiftly establish dominant positions. In such contexts, remedies may be introduced after these effects have already materialised. See for example *Ex post evaluation of the implementation and effectiveness of EU antitrust remedies Final Report* (2025).

[19] In other words, the market test is closely related to the general principles of administrative action, requiring the Authority to adopt measures that do not go beyond what is reasonably necessary to restore effective competition. It serves as a tool to assess the proportionality and adequacy of commitments or remedies. Third or interested parties' participation through the market test gives concrete effect to the principles of transparency and participation set out in Articles 1(1) and 10 of Law No. 241/1990, ensuring that the Authority's decision is reasoned, verifiable, and informed by market observations.

21. Under the current framework, the Authority's powers to collect information from a broader range of market participants improve the factual basis of its investigations. The Authority's practice confirms that a formalised participation of parties, third stakeholders, and regulators contributes to improving the quality of remedies, ensuring that they are appropriate, proportionate, and practicable in restoring competition. This approach reinforces the sound design of structural remedies and supports sustainability of behavioral commitments over time, promoting institutional coherence between competition enforcement and the wider regulatory and economic framework.[20]

2. Procedural Aspects and Practice in Antitrust Proceedings

2.1. Third party participation and market test

22. In antitrust proceedings, the participation of third parties in the process that leads to commitments is governed by law (Article 14-ter(1) of the Competition Act). Under this provision, the Authority may hear interested parties and third parties in order to gather comments on proposed commitments.[21]

23. The procedural framework is further detailed in the Notice on the Procedures for the Application of Article 14-ter, which sets out the modalities, timing, and standard forms

[20] As highlighted in the literature, the Authority, in incorporating European principles on remedies and commitments, adopts a cooperative and proportionate enforcement model, in which the effectiveness of a measure lies in its concrete ability to restore the proper functioning of the market. See, for instance, Pitruzzella and Carpagnano (Diritto Antitrust Italiano ed Europeo, 2020), Colangelo (Commitments in EU and Italian Competition Law, 2015), and D'Alberti (Le Autorità indipendenti, 2018), who observes that, by virtue of the "*regulatory responsibility of competition authorities*," the principles of suitability and proportionality must also be understood in light of the balance between enforcement and the institutional stability of the market. This approach is also consistent with economic theory: for example, Tirole, in *Competition and Industrial Policy in the 21st Century* (2024), stresses that competition policies must be institutionally coherent and that a remedy is effective only when it is practically rational—that is, compatible with incentives, information asymmetries, and administrative costs. Similarly, Motta, in *Competition Policy: Theory and Practice* (2019), underlines that remedies should be incentive-compatible, meaning that they should induce firms to adopt pro-competitive behaviour without resorting to excessive regulation.

[21] During the market test, third parties—such as competitors, customers, suppliers, trade associations, or consumer organisations—may provide written observations addressing, for instance: adequacy and effectiveness of the proposed commitments in eliminating or mitigating the identified competition concerns; feasibility and proportionality, i.e., whether the commitments are realistic, enforceable, and not excessively burdensome relative to the competition issues; potential loopholes or unintended effects, such as ways the commitments might fail to restore competitive conditions or create new distortions; market impact, including likely effects on rivals, consumers, or innovation; suggestions for modification or improvement, proposing alternative measures that could better achieve the remedial objectives.

[21] Article 14-ter of the Competition Act provides that: "*Within three months from the notification of the opening of proceedings for the investigation of a violation of Articles 2 or 3 of this Law or of Articles 81 or 82 of the EC Treaty, undertakings may submit commitments capable of removing the competition concerns identified in the investigation. The Authority, after assessing the suitability of such commitments and consulting market operators, may make them binding*".

for the submission of commitments, as well as the specific rules governing the public consultation phase — commonly referred to as public consultation or market test.[22]

24. Where, on a preliminary basis, the Authority considers that the proposed commitments are not manifestly unfounded—that is, they can be considered as *prima facie* complete and capable of meeting competition concerns—it publishes them for a market test.[23]

25. In antitrust proceedings, the public consultation represents a procedurally formal phase for gathering market-based evidence and observations from interested and third parties in case of commitments. In line with the principles discussed above, when assessing a remedy proposal, the Authority also takes into account any potential harm to third parties.[24]

26. The Authority invites competitors, customers, trade associations, sector regulators, and other interested parties to submit observations on the effectiveness and competitive impact of the commitments. Third parties may exercise their right to participate by submitting written comments within the prescribed time limit (usually 30 days from publication). The outcome of the market test may be complemented by requests for additional information from third parties capable of providing relevant information to the Authority's assessment of the commitments before making them binding.[25] Following the public consultation, the undertakings concerned retain the right to submit observations and propose ancillary amendments, provided that such revisions are strictly linked to the results of the market test and do not fundamentally alter the scope or nature of the original commitments.

[22] According to the *Notice on the Procedures for the Application of Article 14-ter of Law No. 287/1990* (as updated by AGCM Decision No. 23863/2012), undertakings may submit a preliminary version of their commitments before the expiry of the three-month deadline from the notification of the opening of the investigation, for the subsequent submission of the final version — unless an extension is duly requested and justified. The Authority has also issued a *Standard Form for the Submission of Commitments* pursuant to Article 14-ter.

[23] A consistent body of the Authority's decisions has confirmed that undertakings frequently revise or supplement their proposed commitments following the Authority's preliminary observations, prior to the initiation of the market test. This procedural approach reflects and promotes a spirit of constructive dialogue and mutual flexibility between the Authority and the undertakings, recognising that iterative modifications are both ordinary and legitimate within the commitments process. The final version of the commitments thereby embodies a balanced and convergent outcome, reconciling the undertakings' proposals with the Authority's identified competition concerns. See Exergia/Enel – Servizio di salvaguardia (2009), see also Telecom Italia/Condotte escludenti (2012) and Poste Italiane – Servizi di recapito (2016) in which the Authority accepted substantial revisions after dialogue, noting that such changes demonstrated the undertaking's genuine cooperation.

[24] Procedurally, remedies imposed under Article 14-bis of the Competition Act are not subject to a market test. When the Authority intends to impose such measures, it must indicate this in the Statement of Objections, outlining the remedies with sufficient detail to enable the parties to exercise their rights of defence, particularly regarding the necessity and proportionality of the measures.

[25] As said, the Authority seeks to gather information and observations in order to assess the effectiveness of the remedies and possible alternative means of addressing the competition concerns; their practicability; whether, despite being proportional, the measures do not unduly favour the incumbent operators or produce unintended anti-competitive side effects (e.g. new barriers to entry or discriminatory effects). See for example ENI/Italgas, Telecom Italia.

27. The Authority may adopt a reasoned decision on the commitments up until the notification of the statement of objections.[26]

28. In some cases, the outcome of the market test has led the Authority to reject the proposed commitments where the measures were found to be substantively inadequate—namely, ineffective, excessively generic, or insufficiently verifiable—and therefore incapable of eliminating the competition concerns identified.[27]

29. More often, the outcome of the market test enabled to refine the commitments, which were, where appropriate, supplemented by additional technical clarifications obtained from the competent institutional authorities. This process ensured that the final commitments were consistent with the applicable regulatory framework and capable of effective and timely implementation in practice.

30. As an example, in a recent case concerning a potential abuse of dominance in the markets for the collection and regeneration of used lubricating oils, the Authority made binding the commitments offered by the statutory consortium entrusted by law with the management, collection and treatment of waste oils and fats.[28] The commitments were deemed suitable to remedy the competition concerns arising from the consortium's conduct. Owing to its economic and logistical control over the entire value chain and the management of financial contributions, the consortium exercised a decisive influence on both markets, affecting competitors' access and operating conditions.[29] The Authority incorporated the critical observations emerging from the market test and sought interpretative clarifications from the competent public bodies regarding the consistency of the consortium's conduct with the applicable regulatory framework, in particular Article

[26] In summary, each phase of the commitment's procedure reflects distinct and autonomous choices by the parties and the Authority. Formally, the initiative to submit commitments lies entirely with the parties and constitutes a *conditio sine qua non* for opening the procedure ("*sub procedimento impegni"*). The Authority retains full discretion to assess their admissibility within the limits of EU principles. The parties determine the content of the commitments, which cannot be pre-negotiated or directed by the Authority, though the latter may request clarifications or details on their implementation. Finally, the Authority — also in light of the market test — decides, with due reasoning, on their adequacy.

[27] In practice, such cases represent less than 10% of the instances in which the Authority has decided to publish proposed commitments for a market test.

[28] See A569 - CONSORZIO NAZIONALE OLI USATI CONOU-CONDOTTE RESTRITTIVE NEL SETTORE DELLA RIGENERAZIONE (2023). CONOU is a mandatory consortium established under national law to ensure the environmentally sound management of specific waste streams (used lubricating oils and fats), in implementation of the extended producer responsibility (EPR) principle laid down in the Environmental Code (Legislative Decree No. 152/2006).

[29] The investigation concerned a series of practices potentially amounting to an abuse of dominance by CONOU in the markets for the collection and regeneration of used oils. In particular, the Authority identified the following concerns. Barriers to entry for new regenerators – CONOU allegedly refused or delayed the payment of regeneration fees to new entrants (such as Grassano and ROBI), while favouring established regenerators (Itelyum and Ramoil). Unilateral definition of technical and quality requirements – CONOU autonomously set the criteria for assessing the quality of regenerated oil and the suitability of plants, effectively replacing the competent public authorities (regional administrations and environmental agencies – ARPA). Discriminatory contractual clauses with collectors – The collection concession contracts contained provisions that, *de facto*, required collectors to deliver exclusively to the CONOU system, restricting their ability to supply third parties. Exercise of quasi-regulatory powers – CONOU acted as a *de facto* sectoral regulator, issuing binding rules for the entire supply chain despite being a private-law entity with limited public-interest functions.

236(15) of the Environmental Code (*Testo Unico Ambientale*).[30] The purpose of these inquiries was to clearly delineate the boundary between public responsibilities, the consortium's statutory functions, and the legitimacy of its decision-making in the management of used oils. Following these exchanges, the parties amended their initial behavioral commitments by introducing measures to enhance transparency and openness of the system. The Authority considered the revised commitments suitable to address and effectively mitigate the competition concerns identified at the opening of the proceedings.[31] The Authority considered the revised commitments suitable to remove the competition concerns initially identified, in light of their improved transparency, non-discrimination, and alignment with the applicable environmental regulatory framework.

31. In a case concerning behavioral commitments aimed at addressing competition concerns related to data portability, the commitments were strengthened following the market test, with particular emphasis on their effectiveness and practical implementability. In this context, the testing and development software was expanded to allow third-party operators to experiment with and develop in advance the tools necessary for direct service-to-service data portability, prior to the incumbent's official release of the technical solution.[32]

32. In another case concerning the distribution of natural gas within a minimum territorial area (ATEM), the contributions of third parties—in particular the contracting authority—were taken into account in assessing the commitments proposed to address the potential anticompetitive effects of the incumbent operator's conduct.[33] The Authority had expressed concerns that the incumbent, a long-standing concession holder, may have engaged in conduct capable of delaying the launch of the tender procedure for the award of the new concession, with a view to extending its management under the existing arrangement and strengthening its market position. Following the market test, the proposed commitments were amended to include, *inter alia*, obligations ensuring the timely

[30] In the course of the proceedings, the Authority sought interpretative and factual clarifications from the Ministry of Environment and Energy Security (MASE) — responsible for supervising EPR schemes and producer consortia such as CONOU — as well as from the Regional Environmental Protection Agencies (ARPAs), which, together with ISPRA, form the National System for Environmental Protection (SNPA). These bodies perform environmental monitoring and control functions, provide technical support in authorisation procedures (AIA / End-of-Waste), and issue binding technical opinions where required by law.

[31] In response to the market test and the observations submitted by MASE and ARPA, CONOU amended and clarified its commitments to address the concerns raised. In particular: on the collection obligation, CONOU removed the *de facto* exclusivity clause that required collectors to deliver only to the consortium, granting them the option to supply authorised third parties; the unilateral termination clause in collection contracts was also removed or restricted; on transparency, CONOU committed to publish on its website a non-confidential version of its Operational Regulation, to provide greater detail on the eligibility criteria for regenerators and on the technical specifications of regenerated oil, and to clarify that the Regulation does not replace the powers of environmental authorities; on technical monitoring, CONOU refined its monitoring procedures concerning the quality of incoming and outgoing oils, improved coordination with the ARPAs to avoid duplication of controls, and extended verification to existing plants, not only new entrants; on alignment with MASE and ISPRA guidance, CONOU incorporated the interpretation that regeneration involves the separation—not the complete elimination—of contaminants, thus limiting its technical role to parameters defined by MASE and ISPRA. The consortium also committed to monitor limit values according to ISPRA standards.

[32] See A552 GOOGLE-OSTACOLI ALLA PORTABILITÀ DEI DATI (2023).

[33] See A540 CONDOTTE ABUSIVE ITALGAS/ATEM VENEZIA 1 (2020).

transmission of all information necessary for the preparation of tender documentation. The Authority considered that, as modified, the commitments were appropriate and proportionate to safeguard the contestability of the tender process and facilitate market access for potential new entrants.

2.2. Remedies in regulated sectors: institutional cooperation

33. In the Italian framework, cooperation between the Authority and sectoral regulators is formalised either by law or through *Memoranda of Understanding*, which establish procedures for information exchange, consultation, and coordinated assessments.[34]

34. The following examples illustrate how institutional cooperation has contributed to ensuring consistency across enforcement and regulatory approaches, while enhancing the effectiveness and long-term sustainability of remedial solutions, specifically in the case of voluntary remedies.

35. In the electronic communications sector, cooperation between the Competition Authority and regulator AGCom is structured and formalised under the principle of loyal cooperation. The AGCom provides mandatory but non-binding technical opinions in antitrust proceedings and conducts market analyses in consultation with the Authority for *ex ante* regulation. The Authority may depart from the regulator's opinion, provided that it gives adequate reasoning for doing so.[35]

36. In a recent case concerning commitments offered in the framework of a joint investment agreement[36], both authorities coordinated closely. The case raised competition concerns related to market foreclosure and the reduction of infrastructure-based competition, stemming from a co-investment project that risked being insufficiently open and potentially discriminatory. The commitments made binding by the Authority ensured that access remained open, transparent, and non-discriminatory, thus mitigating the risk of strengthening the incumbent dominant position in fixed network markets, with a view to preserving and promoting infrastructure-based competition in the fixed broadband and ultra-broadband telecommunications markets. The AGCom issued a parallel technical assessment on wholesale access pricing and regulatory consistency.[37] This coordinated approach exemplifies complementary institutional roles in safeguarding competition and

[34] The procedure for requesting opinions is laid down, for the Bank of Italy (BdI) and IVASS, in Article 20 of Law No. 287/1990, and for the AGCom in Article 1(6)(c)(11) of Law No. 249/1997. Memoranda of Understanding are also in place with other regulatory and oversight bodies, including the Authority for Energy, Networks and the Environment (ARERA), the Transport Regulation Authority (ART), the Data Protection Authority (Garante Privacy), and the National Anti-Corruption Authority (ANAC).

[35] Reference is also made to the Electronic Communications Code (Legislative Decree No. 259/2003). With regard to relations with the sectoral regulator (AGCom), the Council of State has clarified that the exclusive competence for competition enforcement lies with the Competition Authority, even where the conduct under examination affects the telecommunications sector (see Council of State, Judgment No. 1271/2006, and Opinion of the Plenary Assembly No. 11/2012).

[36] See I850 - ACCORDI FIBERCOP (2022).

[37] By Decision No. 110/21/CONS (2021), AGCom launched a public consultation on the co-investment project proposed by TIM, and, following its assessment, requested amendments to ensure that the commitments were consistent with the European Electronic Communications Code (EECC). The co-investment offer had been submitted to the regulator under Article 76 of Directive (EU) 2018/1972 (European Electronic Communications Code).

coherence between antitrust enforcement and sectoral regulation.[38] The Authority subsequently lifted the commitments upon request by the incumbent. The revocation was grounded on the material changes in market and regulatory conditions, which rendered the original commitments no longer necessary or proportionate to safeguard competition.

37. The Authority has also entered into *memoranda of understanding* with the sectoral regulators for energy, water services, waste management, and the environment, and more recently with the Transport Regulation Authority (ART).[39] These agreements formalise cooperation and the exchange of information in the context of ongoing investigations and may be activated from the initial stages of the proceedings.[40]

38. In the energy sector, numerous cases illustrated how institutional cooperation in the assessment of proposed commitments can result complementary to the competition analysis, thereby ensuring coherence between antitrust enforcement and *ex ante* regulation. Close technical cooperation between the Competition Authority and the sectoral regulator has enhanced enforcement effectiveness, particularly during the liberalisation of energy markets and the introduction of pro-competitive regulation.

39. One representative case is the finding of an abuse of a dominant position by the former monopolist during the liberalisation phase of the retail electricity market.[41] According to the Authority's findings, the incumbent implemented customer-retention strategies and steered the migration of household and small-business customers from the regulated *maggior tutela* regime to the liberalised market by leveraging advantages and information obtained under its former monopoly to strengthen its position in the competitive segment. Such conduct constituted an exclusionary abuse, as it involved the use of data and customer relationships acquired under exclusive rights to distort competition in markets where those rights no longer applied.[42] The sectoral regulator participated in the market test, providing a written technical contribution. It underlined

[38] Pursuant to Article 22 of Law No. 287/1990, the Competition Authority issued its opinion on the amendments requested by AGCom, in parallel with the decision accepting the antitrust commitments in Case I850.

[39] The Transport Regulation Authority (ART) was established by Decree-Law No. 201/2011 ("Urgent measures for growth, fairness and the consolidation of public finances"), subsequently converted into Law No. 214/2011. The ART became operational in 2013, following the appointment of its first Board members and the adoption of its internal rules. A Memorandum of Understanding between the ART and the Authority was signed in 2019 and further updated in 2024.

[40] By way of example, in a recent case (A575 – Barriers to Entry in the High-Speed Rail Passenger Transport Market, 2025), the Authority explicitly referred, in its decision to open proceedings, to the Memorandum of Understanding between the Authority and the ART as the basis for institutional cooperation and the exchange of investigative information. The technical assessments provided by the ART likewise contributed to the collection of preliminary evidence concerning the regulatory framework relevant to the conduct under investigation.

[41] See A480 – Enel/Servizio di Maggior Tutela (2018). Under Legislative Decree No. 79/1999, the Italian legislator provided that, until the full liberalisation of the electricity market, certain customers — notably households and small enterprises — could continue to receive electricity supply from a designated provider at regulated tariffs, within the framework of the Servizio di Maggior Tutela (regulated market service).

[42] This regulated service was operated by Servizio Elettrico Nazionale (SEN), a company belonging to the Enel Group. The Servizio di Maggior Tutela for household customers was definitively phased out in July 2024, marking the completion of the transition to the liberalised market. Customers previously under the regulated regime were transferred either to free-market suppliers or to the *Servizio a Tutele Graduali*, managed by operators selected through public tender procedures.

inconsistencies with sector-specific rules, notably concerning functional and informational unbundling obligations between the group's regulated and liberalised retail activities and the principle of equal treatment among operators. It also noted the limited effectiveness and verifiability of the proposed measures, which risked introducing regulatory asymmetries. The market-test results and the technical and regulatory shortcomings identified by the regulator contributed to the Authority's decision to reject the proposed commitments and continue the investigation. The measures were deemed inadequate to safeguard functional unbundling and data neutrality, which are essential to ensure a genuine level playing field in the transition from regulated to competitive markets.[43]

40. Moreover, in the early phase of electricity market liberalisation, the regulator supported the Authority's assessment of remedies concerning exclusive dealing clauses imposed by the incumbent on large industrial customers, which risked delaying market opening by creating a lock-in effect.[44] The regulator's contribution helped define functional and informational unbundling standards between distribution and retail activities and ensured monitoring of their implementation.[45] These principles were later integrated into the sectoral regulatory framework (AEEG Decision No. 310/01), laying the foundation for Italy's pro-competitive regulatory model.[46] This case exemplifies institutional consistency between the Authority antitrust enforcement and the regulatory context with the aim at safeguarding market contestability during the early stages of electricity market liberalisation.

41. In another case, involving a coordination agreement among major electricity producers for the regulated market, the Authority — recognising the restrictive nature of the agreement — granted a temporary exemption, justified by transitional needs for security of supply and system stability pending the launch of the power exchange (Borsa Elettrica).[47] The decision reflected a balanced application of proportionality and necessity, ensuring that the restrictive agreement remained limited in scope, duration, and consistent with the Regulator's transitional framework.

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[43] The Authority found that the commitments did not remove the risks of abuse of a dominant position. In particular, they failed to ensure an effective functional separation between SEN's regulated activities and Enel Energia's commercial operations in the liberalised market. The measures were considered partial, non-binding, and difficult to monitor, while certain proposed limitations – such as partial restrictions on the use of SEN customer data – were insufficient to guarantee equal treatment among market operators. Given the forthcoming end of the regulated regime, the Authority concluded that a more structural and coordinated intervention, consistent with the sectoral framework, was required rather than reliance on unilateral commitments by the incumbent.

[44] See UNAPACE/ENEL (2018).

[45] The Authority, in cooperation with the Energy Regulator, made behavioural commitments binding on Enel to ensure data neutrality and non-discrimination. These included commitments to implement informational separation ("Chinese walls") between distribution and retail activities, and to guarantee equal access to customer data for all suppliers in the liberalised market. These measures effectively introduced functional and informational unbundling on a transitional basis, later codified in national regulation following the implementation of Directive 2003/54/EC, transposed into Italian law by Legislative Decree No. 164/2000.

[46] In practice, these commitments ensured, on a transitional basis, functional and informational unbundling between distribution and retail activities. This separation was later codified in the sectoral regulatory framework, implementing the legal unbundling requirements introduced by Directive 2003/54/EC.

[47] See I530 - ENEL PRODUZIONE-ENDESA ITALIA (2004).

42. A case concerning alleged abusive conduct in the wholesale electricity market, demonstrates the decisive role of the regulator's technical feedback.[48] Using what-if simulations, the regulator assessed the likely impact of commitments on market prices, capacity availability, and competition dynamics. This analysis allowed the Authority to verify that the commitments were suitable to limit capacity withholding and price increases.[49] A similar cooperative approach has since been adopted in other cases, including those involving direct regulatory participation in market tests, where the regulator submitted written observations and technical assessments supporting the Authority's evaluation.[50]

3. Procedural Aspects and Practice in merger control

3.1. Third party participation

43. Under the national merger control framework, the Authority may authorise a concentration subject to remedies — either conditions or obligations imposed or commitments voluntarily proposed by the notifying parties — where it considers such measures capable of preserving effective competition and thereby avoiding a prohibition decision.[51] Since 2022, following the introduction of the "call-in" powers, conditional clearances may also apply to below-threshold transactions, i.e. mergers not meeting the mandatory turnover thresholds for notification but potentially raising competition concerns in the national market or a substantial part thereof. [52]

44. Where the notifying parties voluntarily submit remedy proposals, the Authority retains full discretion to assess their adequacy, and may either accept them and issue a

[48] See I721 - TOLLING EDIPOWER (2010).

[49] In its opinion, the regulator indicated that, had the commitments been implemented, the average zonal price in the investigated area during peak hours would have been 5–10% lower than the actual level. The regulator issued a favourable opinion, considering the commitments suitable to address the competition concerns — including those adopted in similar proceedings involving other incumbents in different regional areas (case A423).

[50] See A498A – ENEL Dispatching Services Prices (Brindisi Area, 2017).

[51] Article 6 of Competition Act prohibits concentrations (mergers, acquisitions or joint ventures) that significantly impede effective competition in the national market or a substantial part of it — particularly when this is due to the creation or strengthening of a dominant position. If such an effect is found at the end of the investigation under Article 16, the Authority may ban the transaction or authorise it subject to conditions or remedies designed to prevent the anticompetitive effects. Under Article 18 of the Competition Act, the Authority may authorise a concentration subject to conditions or commitments where: the undertakings demonstrate that the operation generates technical or economic progress capable of offsetting its restrictive effects on competition, provided that they commit to adopt the measures necessary to prevent such effects; or the Authority itself imposes conditions or obligations to ensure the maintenance of effective competition and compliance with the commitments undertaken. Indeed, under the Italian legal framework, the Authority can impose remedies even in the absence of a commitment proposal from the merging parties.

[52] Authorisations of below-threshold transactions subject to conditions: C12586 – IGNAZIO MESSINA & C./TERMINAL SAN GIORGIO (2024), concerning port infrastructure services markets; and C12615 – ALPACEM CEMENTI ITALIA / RAMO DI AZIENDA DI BUZZI UNICEM (2024), concerning the markets for the production and sale of cement, as well as the vertically related markets — clinker (used as a raw material for cement) and ready-mix concrete (RMC) — in north-eastern Italy.

conditional clearance decision[53] or proceed with its investigation if the proposed measures are deemed insufficient.

45. Remedies may take the form of structural measures, such as the divestiture of businesses or assets, or behavioural measures, such as access obligations, non-discrimination commitments, or prohibitions on exclusionary practices.

46. In the event of non-compliance with the conditions or remedies imposed under Article 18 of the Competition Act (conditional authorisation), the Authority may impose a fine ranging from 1% to 10% of the turnover generated by the activities affected by the concentration. The parties involved are often required to submit periodic reports to the Authority on the progress of implementation.

47. The principles governing the substantive assessment of remedies — whether imposed as conditions or offered as commitments — are those of effectiveness, proportionality, and practicability, consistent with both national jurisprudence and EU merger control practice.

48. In terms of procedure, under the Italian merger control framework, there is no formal requirement for a public market test or third-party consultation. However, when assessing remedies or gathering information relevant to its decision, the Authority routinely seeks information, comments or technical opinions from interested parties — such as competitors, customers, or sectoral regulators — in the course of its investigation. For this purpose, the Authority may exercise its investigative powers, including requests for information (RFIs), hearings, or institutional cooperation mechanisms with other competent bodies.

49. Two recent merger cases in the natural gas sector illustrate how evidence-based engagement with market participants strengthens the design and effectiveness of merger remedies.

50. In a recent merger case concerning the award of concessions for natural gas distribution, conditionally cleared by the Authority,[54] requests for information to third parties enabled it to confirm that the transaction risked reducing market contestability and reinforcing the incumbent's dominance. The Authority therefore made binding commitments aimed at enhancing market contestability, reduce entry barriers, and mitigate incumbency advantages, ensuring that future gas distribution tenders remained open and

[53] Under the Italian merger control framework, once structural divestitures or behavioural commitments are imposed by the Authority, the parties are required to implement them within the deadlines set out in the decision. The duration of such obligations varies depending on the case and its complexity. In cases of non-compliance—such as delayed, incomplete, or ineffective implementation—the Authority may impose fines, revoke the authorisation, or require additional measures, pursuant to Article 19 of the Competition Act. The Authority may revoke or revise, at request of the merging parties, the remedies previously imposed when changes in the market conditions or regulatory framework make them obsolete, unnecessary or disproportionate. This power allows the Authority to better align its remedies to market developments or other factors influencing the implementation of remedies which could not be predicted at the time of the merger decision. In such cases, the Authority needs to open formal proceedings to assess the merging parties' request to revise or revoke the remedies and, subsequently, issue a new decision to close the proceedings.

[54] See C12294 - A2A/AMBIENTE ENERGIA BRIANZA (2020).

competitive despite the concentration, and at promoting broader and more effective participation in future local tenders.[55]

51. In another case, concerning a merger with potential horizontal effects in the natural gas storage market and in a context of sectoral regulation, an extensive consultation involving over 120 operators helped assess potential horizontal effects and service conditions.[56] The Authority made behavioral commitments binding on the incumbent to maintain service quality and flexibility, ensuring proportionate and effective protection of competition.

3.2. Remedies in regulated sectors: institutional cooperation

52. In Italy, merger control in the banking sector falls under shared competence between the Authority and the Bank of Italy. The Authority is responsible for assessing competition effects, while the Bank of Italy evaluates prudential and systemic stability.[57]

53. A Memorandum of Understanding (1996, updated in 2014) governs their cooperation and exchange of information. The Authority relies on the Bank's technical and statistical data when defining relevant markets and assessing the potential impact of transactions, while maintaining full independence in its decisions.

54. Under Article 20 of the Competition Act, the Bank of Italy may recommend the authorisation of a merger for financial stability reasons, even if it strengthens a dominant position.

55. Cooperation between the two authorities has led to conditional clearances balancing competition and stability objectives. The Bank of Italy's input has proven essential for identifying divestiture areas, assessing technical aspects of lending, and verifying buyer independence, thereby ensuring that structural remedies are both effective and proportionate.[58] In another case, the Bank of Italy acted in an **advisory and informational capacity**, supporting the Authority's competition assessment as **prudential supervisor**.[59]

[55] Commitments included the following: payment postponement, allowing new entrants to defer payment for network assets, easing financial barriers and improving access to tenders, particularly significant in Monza–Brianza 2. Employment measure: permitted the incoming operator to retain local staff, lowering transition and management costs and making tenders more attractive. Transitional Service Agreement: provided for temporary technical and operational support (up to 12 months), mitigating informational advantages of the incumbent and easing the transition. Information measure: required A2A to disclose detailed technical and operational data to potential bidders, reducing informational asymmetries and improving tender transparency.

[56] See C12686 - SNAM/EDISON STOCCAGGIO (2025).

[57] Law No. 262/2005, as amended by Law No. 303/2006. The Bank of Italy assesses such transactions with the aim of evaluating their impact on the stability of the financial system, in accordance with its prudential supervision and stability functions under the Consolidated Banking Act (Testo Unico Bancario – Legislative Decree No. 385/1993).

[58] See C12287 – Intesa Sanpaolo / UBI Banca (2020). In this case, to ensure third-party participation, requests for information were sent not only to the Bank of Italy (BdI) but also to the insurance market supervisory authority (IVASS), as well as to other national banks and several major insurance companies. See related clearance decisions to make effective the structural measures; See C12297B – BPER/Ramo di azienda di UBI (2021).

[59] See C2988 – Banco di Sicilia / Sicilcassa / Mediocredito Centrale (1998). Although the opinion of the Bank of Italy (BdI) was not binding, the Authority took into account the regulator's technical observations in defining the scope of the structural remedies. The Authority complemented its

Both cases illustrate how close institutional cooperation can lead to coherent interventions and strike an appropriate balance between competition protection and regulatory objectives, such as stability and consolidation.

56. Similarly, in merger control within the electronic communications sector, the AGCom provides the Authority with technical opinions and observations to support the assessment of transactions and the design of possible remedies.

57. In a recent case in the postal and courier services sector[60], institutional cooperation between the Authority and the AGCom extended beyond the assessment and acceptance of commitments to include the implementation and compliance phase, ensuring proper execution of behavioural measures. The remedies were designed to guarantee a level playing field by granting non-discriminatory access to the postal network, fair wholesale tariffs, and the preservation of the target's network in support of the universal service. The AGCom provided technical opinions on network conditions, coverage, and service modalities, introducing an *ex ante* consistency check between its regulatory measures on the incumbent and the competition objectives pursued by the Authority. Through the exercise of its regulatory powers, the AGCom translated the principles underpinning the antitrust remedies into pro-competitive regulatory measures, ensuring their full integration within the postal sector's legal and operational framework and thereby contributing to the lasting and effective enforcement of competition principles.[61]

58. As illustrated in the following Box, institutional cooperation between the Authority and the AGCom has evolved beyond individual merger cases to ensure that the liberalisation of the postal sector translates into effective and sustainable competition, fostering a stable and competitive regulatory environment open to smaller operators. To this end, the AGCom aligned the postal licensing framework with the Authority's competition recommendations, ensuring the removal of unjustified entry barriers and the establishment of fair and transparent access to the postal network.[62] The two Authorities acted in a coordinated manner to align competition rules with sectoral regulation and strengthen the impact of pro-competitive measures. Furthermore, the Authority and the AGCom, together with the central public procurement body ANAC, jointly adopted guidelines on subcontracting in postal services to harmonise public procurement rules and promote greater market openness and participation.[63]

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antitrust assessment with territorial data and prudential evaluations necessary to determine the suitability and independence of the purchaser. The decision states that "*the Authority, having consulted the Bank of Italy, authorised the concentration subject to structural conditions designed to preserve competition in the Sicilian banking market*."

[60] See **C12333 – Poste Italiane / Nexive (2020)**. The Authority examined several market segments, distinguishing between regulated and liberalised services: (i) ordinary correspondence services for business and public administration clients (B2B and B2G); (ii) bulk mail and direct marketing delivery services; (iii) postal notification services for judicial acts and legally binding communications; and (iv) courier and parcel delivery services.

[61] See also AGCom Resolutions Nos. 171/22/CONS, 30/23/CONS and 503/24/CONS.

[62] See the Authority's Advocacy Report S4602 and the ensuing AGCom Resolution No. 77/18/CONS approving the Regulation on the licensing of postal notification services for judicial acts and traffic violations. The AGCom invited the Authority to participate in the public consultation on this Regulation, which incorporates several of the competition authority's recommendations.

[63] See the Act of joint interpretation of the authorities concerning Article 119, paragraph 3(d) of the new Public Contracts Code (Legislative Decree No. 36/2023).

Box 1. Multi-level institutional cooperation in the postal sector

In **Case C12333 – Poste Italiane / Nexive Group (2020),** the Authority assessed Poste Italiane's acquisition of Nexive, Italy's second-largest postal operator (formerly controlled by PostNL and Mutares Holding). The merger raised competition concerns as it eliminated direct rivalry between the only two operators with nationwide delivery networks, potentially creating a monopoly in several segments (ordinary mail, direct marketing) and leading to unilateral price increases and quality deterioration. Poste offered a combination of behavioural and structural commitments to address these concerns, including: n**on-discriminatory access** to its delivery and sorting network for rival postal operators; p**ricing and transparency commitments** ensuring fair treatment of business and public-sector clients in tenders; p**reservation of the target (Nexive's) postal network** to facilitate gradual transition and entry opportunities; and **accounting and informational separation** between the target (Nexive) and Poste's operations.

The commitments had a multi-annual duration, with the Authority retaining the power to review them. Furthermore, Poste agreed that if behavioural remedies proved insufficient, the Authority could require **divestitures** of operational assets and appointed a **monitoring trustee** to oversee compliance.

Regulatory follow-up by the AGCom. The AGCom subsequently transformed these principles into permanent **wholesale access obligations**, setting cost-oriented tariffs, technical access rules, and publication requirements (Resolutions 171/22/CONS, 30/23/CONS, 503/24/CONS). These measures secured open, transparent, and sustainable market access for alternative or new postal operators, subject to monitoring and enforcement by the AGCom.

Joint interpretation by AGCM, AGCom and ANAC. To clarify subcontracting rules in public tenders for postal services, the three authorities issued a **joint interpretative act** on Article 119(3)(d) of the Public Contracts Code. This initiative sought to prevent restrictive tender practices by contracting authorities, promote competition, and enable smaller firms to participate—either directly or through subcontracting—thus enhancing market openness and non-discriminatory access.

59. In a recent case concerning fixed network retail services for residential, business, and public customers, the Authority conditionally cleared a transaction involving the acquisition of a firm that would otherwise have exited the market.[64] Behavioural remedies were imposed to preserve effective competition and facilitate market entry by new operators. The AGCom played a complementary technical role, by ensuring the regulatory consistency of the remedies with the wholesale access framework and infrastructure competition objectives, and issuing a favorable opinion.

[64] See C12659 Swisscom Italia / Vodafone Italia (2024).

4. Cooperation within the ECN Network

60. Institutional cooperation in the design and implementation of remedies has also extended within the European Competition Network (ECN) to antitrust investigations conducted by one or more NCAs in cases with a cross-border dimension.[65]

61. In a case concerning online hotel booking intermediation markets, which had a national scope, the AGCM (Italy), the Autorité de la Concurrence (France), and the Konkurrensverket (Sweden), coordinated by the European Commission within the ECN, cooperated closely in their respective investigations and agreed on a consistent set of commitments, which were subsequently monitored jointly.[66] The competition concerns addressed in the parallel proceedings related to Most-Favoured-Nation (MFN) clauses, which restricted hotels' pricing freedom and reduced competition between online travel agencies (OTAs).[67] The *ex post* monitoring was structured on two coordinated levels. At national level, each NCA supervised the implementation of the commitments in its territory, allowing hotels and local operators to report possible non-compliance (such as remaining MFN clauses or discriminatory practices). At European level, the Commission, acting through the ECN, oversaw joint monitoring and coordination based on regular reports from the NCAs on compliance outcomes and enforcement practices. This mechanism ensured a harmonised interpretation and uniform application of the commitments across Member States.

62. Another case — involving marketplace and e-commerce logistics services — further illustrates how substantive coordination within the ECN, consistent with the framework for parallel enforcement by NCAs and the Commission, enables coherent handling of cross-border conduct and harmonisation of remedies between Member States and the EU level.[68] Through close coordination and information sharing, the Authority and the European Commission aligned their analyses regarding the logistics market, the theory of harm – e.g. the leveraging effects between marketplace and logistics services, and the design of behavioural remedies, ensuring complementarity between national and EU enforcement.[69] At national level, the Authority found that Amazon had leveraged its dominance in marketplace intermediation to favour its own logistics service, steering sellers toward its own logistics service, thereby distorting competition among third-party sellers. The Authority fined the incumbent e-commerce platform for abusing its dominance

[65] Cooperation among National Competition Authorities (NCAs) within the European Competition Network (ECN) is governed by Regulation (EC) No. 1/2003, which establishes the framework for coordination between the European Commission and NCAs — notably Articles 11–13 on information exchange, mutual assistance, and case allocation. The Commission Notice on Cooperation within the ECN (2004, updated 2021) provides practical guidance on how this cooperation operates in practice. The framework was further reinforced by the ECN+ Directive (EU) 2019/1, which harmonises the powers, independence, and enforcement tools of NCAs across the EU.

[66] See I779 - MERCATO DEI SERVIZI TURISTICI-PRENOTAZIONI ALBERGHIERE ON LINE (2015).

[67] The behavioural remedies, accepted and harmonised among the NCAs, required: the removal of wide MFN clauses (covering all distribution channels), the retention of narrow MFN clauses (limited to the hotel's own website), and contractual transparency obligations towards hotel partners.

[68] See the Authority's case A528 Amazon / FBA (2019) and the 2022 decision in EU cases AT.40462 ("Amazon Marketplace") and AT.40703 ("Amazon Buy Box").

[69] A coordination and information-sharing process was also in place with the telecommunications regulator.

by favouring sellers using its own logistics services and remedies. In essence, the **behavioural remedies** required Amazon to **apply transparent, objective, and non-discriminatory criteria** for granting these advantages, irrespective of the logistics service used. The remedies aimed to dismantle the link between the the incumbent dominant marketplace position and the preferential treatment of its own logistics service ensuring that sellers are not unduly forced to use the incumbent's services to obtain key marketplace advantages. That is to say, remedies were aimed to restore a level playing field and competitive conditions for alternative logistics providers.[70] **A monitoring trustee** was indeed appointed to oversee implementation and to report periodically to the Authority.[71] The case marks an important development in jurisprudence on self-preferencing and highlights closer scrutiny of multi-service digital ecosystems combining intermediation, logistics, and related services. Subsequent court rulings upholding the Authority's decision confirmed that national competition authorities have jurisdiction to address such conduct even when implemented by cross-border digital platforms.

63. In parallel, the European Commission carried out an investigation to assess whether the criteria established by the incumbent marketplace to select the winner of the Buy Box and to enable sellers to offer products under its Prime Programme in other European countries led to preferential treatment of Amazon's own retail business or of the sellers that use Amazon's logistics and delivery services. The Commission preliminarily concluded that Amazon abused its dominance insofar as the rules and criteria governing the Buy Box and Prime unduly favoured its own retail business, as well as marketplace sellers that used Amazon's logistics and delivery services.

64. Therefore, the European Commission made binding at EU-level a set of commitments offered by Amazon, which were harmonised with the remedies imposed in Italy by the Authority, thus ensuring coherent and consistent enforcement across jurisdictions.

5. Concluding remarks

65. The legal framework provides the Authority with broad discretion in the enforcement of remedies. Nonetheless, the Authority's practice is guided by the principle that effective remedies must address the specific competition concerns identified in the case, remain proportionate, and be feasible and verifiable. While proportionality continues to steer the Authority's assessment, its application needs to take into account the importance of preventing undertakings from retaining undue advantages gained through anti-competitive conduct —particularly in markets characterised by dynamic competitive features—so as to ensure that remedies are capable of restoring effective competition.

66. The Authority's practice has developed mainly in the context of voluntary remedies and conditional merger clearances, but it can also offer valuable guidance for the design and assessment of corrective measures in antitrust infringement proceedings.

[70] In sum: the incumbent platform was required to provide fair, reasonable & non-discriminatory (FRAND) access to its marketplace visibility and sales advantages to all third-party sellers who meet objective standards, not only those using Amazon's logistics service (FBA). Amazon had to define and publish the standards and access terms within one year, and refrain from negotiating exclusive logistic terms that tie the use of its FBA service to favourable marketplace benefits. Amazon was required to abstain from negotiating exclusive logistics contract terms and conditions for third-party sellers outside FBA (i.e., negotiating with carriers / log-service providers on behalf of sellers) that would distort competition.

[71] The decision was upheld by the lower Court (TAR Lazio, 2025).

67. In carrying out its investigations, the Italian Competition Authority has gone beyond formal legal mechanisms to promote broad market participation and institutional cooperation in the design and monitoring of remedies, both within antitrust proceedings and in merger review. This has significantly contributed to the effectiveness and legitimacy of competition enforcement.

68. **Third-party participation**, embedded in the general principles of administrative procedure under **Law No. 241/1990**, ensures transparency and inclusiveness in the decision-making process. Beyond procedural fairness, this participation provides **added-value information** that enhances the design and assessment of remedies, ensuring their **coherence with market dynamics** and practical feasibility.

69. The contribution of market participants through public consultations has made it possible to assess whether the proposed remedies were truly adequate to address competition concerns and were practically implementable. In many cases, the market test led to more effective, better-defined remedies, more consistent with the specific characteristics of the markets concerned. Furthermore, continued engagement with stakeholders has allowed for a dynamic reassessment of the adequacy of remedies over time, in light of evolving market conditions.

70. At the same time, **inter-institutional cooperation with sector regulators** plays a complementary role. Such coordination enables a **balanced approach** between competition enforcement and the broader **regulatory context**, aligning pro-competitive objectives with sectoral policy and technical constraints. This dialogue helps prevent inconsistencies and supports the sustainability of remedies over time. In markets undergoing liberalisation, the combination of the sector regulator's technical expertise and the competition principles underlying antitrust intervention has made it possible to design more effective solutions to foster and facilitate the development of competition, acting as a catalyst for market opening.

71. Finally, in markets with a cross-border dimension, international cooperation with other competition authorities has proven essential to achieve a better understanding of the underlying issues, to enable the exchange of information and expertise, and, most importantly, to ensure that the remedies adopted are coherent and effective.