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AUTORITÀ GARANTE DELLA CONCORRENZA
E DEL MERCATO

# ANNUAL REPORT

2003

## ACTIVITIES CARRIED OUT ACCORDING TO LAW 287/90: OVERVIEW

The Authority evaluated 577 concentrations, 54 agreements and 14 possible abuses of dominant position in applying Italian antitrust law during the course of 2003.

**The Authority's activity**

| | 2002 | 2003 | January-March 2004 |
|---|---|---|---|
| **Agreements** | 46 | 54 | 13 |
| **Abuses of dominant positions** | 19 | 14 | 15 |
| **Concentrations** | 651 | 577 | 140 |
| **Company separation** | 21 | 18 | 4 |
| **Fact-finding inquiries** | - | 1 | - |
| **Non-compliance with orders** | 3 | - | - |
| **Opinions submitted to the Bank of Italy** | 28 | 37 | 4 |

**Distribution of the proceedings concluded in 2003 by type and outcome**

| | No violation of the law | Violation of the law, conditional authorization or compliance following changes to agreements | Cases beyond the scope of the Authority's powers or to which the law was not applicable | Total |
|---|---|---|---|---|
| **Agreements** | 27 | 4 | 23 | 54 |
| **Abuses of dominant position** | 1 | 3 | 10 | 14 |
| **Concentrations** | 527 | 3(*) | 47 | 577 |
| **Company separation** | 18 | - | - | 18 |

(*) Includes a case of withdrawal of the notification following the Authority's investigation.

Six investigations of agreements were concluded in 2003 *[Diagnostic tests for diabetes; Local public transportation companies-oil industry; Price changes in some tobacco brands; Alitalia-volare; Compass Group Italia/Autogrill-Ristop; Sagit-Ice cream sale and distribution contracts. The following cases, for which the investigations were concluded in the first trimester 2003, were already described in last year's Annual Report: Local public transportation companies-oil industry; price changes in some tobacco brands; sagit-Ice cream sale and distribution contracts.]*. In three of these cases, the proceedings ended with the finding of a violation of the law (according to Art. 2 of Italian Law 287/90) *[diagnostic tests for diabetes; Local public transportation companies-oil industry; price changes in some tobacco brands.]*. Fines totalled 101 million euro *[diagnostic tests for diabetes; Local public transportation companies-oil industry; price changes in some tobacco brands.]*. In one case, the Authority granted an individual exemption from the rule prohibiting restrictive agreements, as allowed by Art. 4 of Law 287/90 *[Alitalia-Volare.]*. Two cases ended with a finding of non-violation of the prohibition of anti-competitive agreements *[Sagit-Ice cream sales and distribution contracts; Compass Group Italia/Autogrill-Ristop.]*. In the first three months of 2004, the Authority concluded an investigation with a finding of a violation of Art. 2 of Law 287/90, imposing total administrative fines of about 141,000 euro *[Revenue Guard Corps-Italian Federation of Professional Real Estate Agents]*.

In most of the cases of suspected abuses of dominant position, it was possible to rule out the existence of unlawful practices without starting an investigation. Four investigations were concluded in 2003 *[Diagnostic Tests for Diabetes; Aviapartner-Company Guglielmo Marconi Airport Bologna; Compass Group Italia/Autogrill-Ristop; Enel Trade-Suitable Clients.]*. In one case, no violation of Art. 3 of Law 287/90 *[diagnostic tests for diabetes.]* was found. In two cases, the practices violated Art. 3 of Law 287/90 (Aviapartner-Company Guglielmo Marconi Airport, Bologna; Compass Group Italia/Autogrill-Ristop) and a fine was imposed for a total of about 880,000 euro (Aviapartner-Company Guglielmo Marconi Airport, Bologna). In the fourth investigation (Enel Trade- eligible customers) the Authority found a violation of Art. 82 of the EC Treaty, imposing a fine of 2.5 million euro.

In 2003, 577 concentration cases were examined. In 529 cases, formal decisions were made according to Art. 6 of Law 287/90, whereas in 46 cases the Authority concluded that there were no grounds for further proceedings; one case was referred to the European Commission and, in one case, the parties voluntarily withdrew the notification of the proposed concentration. In three cases the Authority conducted a second phase investigation. In two of these cases, the Authority granted an authorization on the condition that the companies adopt specific corrective measures *[Telecom Italia-Megabeam Italia; British American Tobacco-Ente Tabacchi Italiani. ]*. In one case, the parties withdrew the notification of the proposed concentration *[Telecom Italia- Pagine Italia company branch.]*. Finally, in one case the Authority referred the notified operation to the European Commission, as the operation was subject to EU Merger Regulation *[General Electric/Agfa Ndt-Agfa Gevaert company branches.]*. In the first quarter of 2004, 140 additional mergers were examined.

The Authority submitted 25 reports according to Articles 21 and 22 of Law 287/90, regarding anticompetitive practices deriving from current laws, regulations or proposed legislation. Of these reports, 21 were issued in 2003 and 4 in 2004. As in the previous years, they concerned a wide range of economic sectors. In the same period, the Authority concluded a general fact-finding survey of the market for automobile civil liability insurance *[ Survey of the car insurance sector.]*.

**Reporting and advisory activities by sector of economic activity**
**(number of actions January 2003 - March 2004)**

| **Sector** | **2003** | **January- March 2004** |
|---|---|---|
| Transportation and vehicle rental | 5 | 2 |
| Waste disposal | 2 | - |
| Telecommunications | 2 | - |
| Publishing and press | 1 | - |
| Insurance and pension funds | 1 | - |
| Financial services | 1 | - |
| Postal services | 1 | - |
| Recreational, cultural and sports activities | 4 | - |
| Cinema | 1 | - |
| Education | - | 1 |
| Professional and entrepreneurial activities | - | 1 |
| Other services | 2 | - |
| Misc. | 1 | - |
| **Total** | **21** | **4** |

## AGRICULTURAL AND MANUFACTURING ACTIVITIES

*British American Tobacco-Ente Tabacchi Italiani*

In December 2003, the Authority authorized the acquisition of Ente Tabacchi Italiani Spa (ETI) by British American Tobacco plc (BAT), on the condition that certain specific obligations be met. The operation originated from the privatization of ETI. BAT had won the public competitive tender held by the Ministry of Economic Affairs in 2003. The operation was initially notified to the European Commission as it came within the scope of the EU Merger Regulation. On the basis of a request by the Authority, the Commission subsequently referred the case to the Authority, in order to evaluate the possible effects of the concentration on the Italian cigarette, cigar and smoking tobacco markets.

The aim of the investigation was to determine whether the concentration could possibly lead Philip Morris and BAT-ETI (the new entity in the Italian cigarette market) to create or strengthen a collective dominant position such that effective competition be substantially and durably reduced. The investigation was justified by the following circumstances: *a*) the large market shares (over 60% in value) held by Philip Morris - the traditional leader in the Italian market, by ETI (over 20%) and by BAT (5-10%), compared to the shares held by the other competitors (less than or equal to 5%); *b*) the fact that, in recent months, BAT – which, with a market share of over 30%, was to become the second operator in the market - had been the most dynamic competitor, adopting price reduction strategies on some cigarette brands and managing to significantly increase its market share; *c*) the *de facto* monopoly held by ETI through its controlled subsidiary Etinera, on the wholesale distribution of processed tobacco in Italy; *d*) the presence of pre-existing contractual relationships between Philip Morris and ETI, consisting of production contracts (allowing ETI to produce on behalf of Philip Morris) and of a distribution contract, according to which Philip Morris products were distributed by ETI through its controlled subsidiary Etinera; *e*) previous collusive practices of Philip Morris and ETI, ascertained by the Authority in the course of an investigation concluded in March 2003 (Price changes in some tobacco brands).

The investigation confirmed that the concentration would have created a collective dominant position in the Italian cigarette market. Considering the combined share of Philip Morris and BAT-ETI (85-95%), it was possible to confirm the presence of the three elements which, under Community case law, define a collective dominant position: *i*) the ability of each oligopolist to be timely informed of the conduct of the other one (market transparency); *ii*) the possibility for tacitly coordination between the two companies, in the absence of incentives by either of them to deviate from a common line of action (dissuasive ability); *iii*) the impossibility for other much smaller competitors and for consumers to significantly influence this tacit coordination.

Market transparency was assured by the timely publication of price changes and registration of new cigarette brands in the Italian Official Gazette. Dissuasive ability originated from the possibility that each firm could easily retaliate should the other one compete too aggressively: Philip Morris had the ability to punish BAT/ETI by withdrawing from the production contract it held with ETI, or not to renew it past its expiration on 31 December 2005; the contract represented about 60% of ETI production capacity; BAT/ETI could threaten to exclude Philip Morris from the Italian market by refusing to provide access to its controlled network of wholesale distribution. Lastly, the very low market shares (often less than 1%) of most

competing producers excluded their ability to influence the practices of the two market leaders. The Authority therefore concluded that the conditions existed for the creation of a collective dominant position, which could eliminate - or substantially and persistently reduce - competition in the Italian cigarette market.

During the investigation, BAT showed willingness to make some commitments aimed at removing the anticompetitive effects of the acquisition. In particular, BAT committed itself not to renew the production contract with Philip Morris, when the contract would expire on December 31 2005. Furthermore BAT committed itself to strengthen the corporate separation of Etinera. The Authority considered these commitments sufficient to eliminate the risk that, following the concentration, a collective dominant position would be created.

## PHARMACEUTICALS

*Diagnostic Tests for diabetes*

In April 2003, the Authority concluded an investigation concerning a complex web of restrictive agreements between the following firms, all active in the supply of diagnostic tests for diabetic patients: Roche Diagnostics Spa, Ortho Clinical Diagnostics Spa, Bayer Spa, A. Menarini - Industrie Farmaceutiche Riunite Srl, Abbott Spa and by the National Association of companies operating in the sectors of Biomedical and Diagnostic technologies (Assobiomedica). The Authority found a violation of Art. 2 of Law 287/90.

The relevant product market was defined as the supply of diagnostic tests for the detection and control of glycaemia levels; the tests consist of reactive strips and readers to be used jointly (complementary products). From a geographical point of view, the market was considered to be national.

The supply of diagnostics tests for diabetes is heavily regulated and the Italian National Health System reimburses most strip consumption but there is no reimbursement for the readers. Prices are not regulated, but there are different purchase, reimbursement and supply criteria for reactive strips in the various Italian regions and in the various Local Health Units (ASLs). In particular, there are two distinct distribution methods for reactive strips. The prevailing method is distribution through pharmacies, which are reimbursed by the National Health System (indirect distribution). A second method is so-called direct distribution, carried out by the public structures themselves (ASLs and hospitals), which purchase the products through competitive tenders (direct distribution).

During the investigation, the Authority found that the price increase was due to a coordination of the companies' policies, predominantly planned within the trade association, aimed at eliminating any possible direct price competition for sales of the strips. The ultimate goal of the cartel was to favor distribution through pharmacies, since this eliminated any direct competition between the producing companies and ensured control of the sale price of the strips.

The companies' strategy involved different practices which nonetheless aimed at the realization of a single collusive strategy: the elimination of price competition through the definition of a common price for the strips. In the first place, companies agreed to discourage or to prevent ASL's from organizing the competitive bids for strips by agreeing not to participate to public tenders or all to bid the same price. Where the public structures (Regions or ASLs) had chosen the indirect distribution system, the producing firms agreed on how to respond to tenders organized by pharmacy associations: they refused to deal or submitted bids at prices far above the normal level. In some cases the producing firms jointly fixed a common price for strips sold to pharmacies. Assobiomedica played an active role in this context, since it represented associated companies in many negotiations with public organizations in the setting of purchase prices.

The Authority held that the three above-mentioned practices, (preventing, hindering or distorting competitive procedures in the supply of reactive strips to the ASLs; collusive determination of supply conditions vis-à-vis pharmacy associations; fixing a unique and common price for the supply of reactive strips through the indirect distribution system), which individually had a *per se* restrictive object, were all part of a single collusive strategy, the aim of which was to eliminate any possible price competition for the supply of reactive strips. In particular, the Authority showed that it was precisely this collusive strategy that allowed the companies to neutralize any competitive interaction that could possibly originate from the

different procurement and distribution methods chosen by the public structures, in violation of Art. 2 of Law 287/90.

Because of the seriousness of the ascertained conducts, the Authority decided that those practices should be considered one by one and, at the same time, all together as a single strategy, because a systematic alteration of competition had taken place, both in the public procedures and in the tenders of single purchasers. In establishing the level of the fine, the Authority also considered that all producers of strips for diabetes did participate in the conspiracy and that these were all well-established multinational companies. Participants to the cartel were fined a total 30.5 million euro.

## ELECTRICITY

*Enel Trade - eligible clients*

In November 2003, the Authority concluded an investigation pursuant to Art. 82 of the EC Treaty, regarding Enel Spa and its controlled company Enel Energia Spa (formerly Enel Trade Spa). The investigation concerned unlawful practices in the market of the sale of electricity to eligible clients, considering, in particular, some clauses of the *Contract for the supply of electricity* (standard contract), drafted by Enel Energia for the sale of electricity to eligible clients (end-users, wholesalers and consortia) for the year 2002: the contract regulated conditions and costs applied to those clients for the supply of national or imported electricity. More specifically, the standard contract provided *i)* that Enel Energia be the exclusive supplier of imported electricity; *ii)* a ban on purchase of domestic electricity, both from third parties or directly through auction; *iii)* price increases in case of electricity purchases from specific companies other than Enel Energia; *iv)* a pre-emption clause for Enel Energia to supply electricity for use by foreign production sites owned by eligible clients already served by Enel Energia in Italy; *v)* the allocation of a bonus for those eligible clients who, at the end of 2001, renew their contract with Enel Energia.

The Authority found that Enel Energia held a dominant position in the market of electricity supply to eligible clients. This finding was based on the following factors: the absolute and relative importance of Enel Energia's market share; the fact that the company belonged to a vertically integrated group (with a particularly strong position in electricity generation); that its reputation with customers was quite high; and that it enjoyed a competitive advantage due to its ability to meet all the eligible clients' electricity needs.

Concerning the provisions contained in the standard contract, the Authority considered that the exclusivity clause on imported electricity, the prohibitions of purchasing domestic electricity from other operators, the price increases applied to those using specific supply sources other than Enel Energia as well as the allocation of a *bonus,* at the end of 2001, to clients who renewed the contract for the following year, were all elements of a single strategy carried out by the dominant company. This single strategy aimed at locking many of its eligible customers into their current contracts and hindering or preventing other competing operators from offering electricity, even for just a part of Enel Energia's eligible clients' electricity needs. The combined effects of the cited contractual clauses allowed Enel Energia to present itself as the sole firm capable of meeting eligible clients' overall electricity demand. The Authority held that the commercial practices carried out by Enel Energia could possibly hinder intra-EU trade, in violation of Art. 82 of the EC Treaty, as they aimed to create barriers for producers and wholesalers, both domestic and foreign, preventing them from entering the market for the supply of electricity to eligible clients in Italy.

Concerning the seriousness of the violation, Enel, through Enel Energia, developed customer loyalty practices that prevented market liberalization, at a time (2002) when the entry on the market of new potential eligible clients was expected as a consequence of the lowering of the eligibility thresholds. The Authority therefore decided to fine Enel a total of 2.5 million euro, considering the high number of eligible clients affected by the strategy and the duration, limited in time, of the commercial offer in question (from the end of 2001 to the end of 2002).

## WATER SUPPLY SERVICES

*Opinion on the regulations in the water supply sector*

In September 2003, the Authority sent an opinion to Parliament, the Government and regional and local administrations, concerning regulations in the water supply sector. In particular, according to Law 36/94, private subjects can only receive licenses for the provision of water through public tenders. However, this reform was not implemented in a homogeneous way across the country and the use of competitive tenders was frequently avoided. Addressing this point, the Authority noted that for water supply services the only possibility of comparing the efficiency of different suppliers was through bidding processes, i.e. competition *for* the market. The Authority also pointed out that granting long-term licenses represents an obstacle to the pro-competitive reform of the sector, suggesting that the duration of licenses should be strictly proportional to, and never greater than, the period necessary for the recovery of the investment made by the licensee.

## AIR TRANSPORTATION AND AIRPORT SERVICES

*Alitalia-Volare*

In July 2003, the Authority concluded an investigation concerning Alitalia Linee Aeree Italiane Spa and Volare Group Spa. The investigation aimed to verify whether the code sharing agreements between the two companies - voluntarily notified pursuant to Art. 13 of Law 287/90 - could possibly result in anticompetitive practices or whether an exemption under Art. 4 of the law could be granted. According to the notified agreement the two firms were to codeshare regular air transportation services on 14 domestic and 8 international routes; the agreement also added Volare to Alitalia's "frequent flyer" program "MilleMiglia".

In order to evaluate whether the notified agreement deserved an exemption, the Authority considered that the 22 routes in question (14 domestic and 8 international) constituted separated relevant markets. The 14 domestic routes accounted for a significant share of domestic air traffic, covering about 28% of all domestic passengers and over 30% of total domestic air travel value. The combined Alitalia /Volare share on these domestic routes ranged from 25-35% to 100%.

The domestic routes involved were characterized by the existence of major barriers to entry. The economic barriers were resulting from the minimum efficient size (in terms of production capacity and size of the connecting network) necessary for an airline to enter a new market at economically sustainable conditions. The reputation barriers essentially lay in Alitalia's long-established presence on the different routes covered by the agreement, as well as in its use of frequent flyer programs. Further, some airports (especially Milano Linate) were subject to regulatory barriers, such as quantitative restrictions on the number of slots available, as well as restrictions on the way slots had to be allocated. In particular slots had to be allocated by a responsible body (Assoclearance) which favored companies belonging to corporate groups, such as Alitalia and Volare.

The investigation showed that, in summer 2002 and in winter 2002-2003, the agreement had involved the whole Volare network, both domestic and international: Volare, in fact, ceased to offer any domestic or European service independently. Alitalia, instead, used the codesharing strategy for a small portion of its domestic routes, sharing about 30% of its domestic routes with Volare and only 25% of the flights operated on these routes, while independently offering more flights than those codeshared with Volare. Another particularly critical situation was the competition on routes to and from Linate; here, the agreement consolidated the positions of the two airlines, reducing competition in markets already characterized by severe limits in terms of available slots. In particular, the agreement granted the two carriers twice the number of slots held by all other competitors combined, and about three times as many as any other single carrier. This led to an increase in the barriers to entry on the flights to and from Linate involved in code sharing.

Concerning the effects of the agreement, in addition to the above-mentioned worsening of competitive conditions on some routes to and from Linate, the investigation confirmed a reduction in flight frequencies for the two air carriers as well as a reduction in the number of seats offered on four domestic routes (Fiumicino-Catania, Fiumicino-Palermo, Malpensa-Napoli and Fiumicino-Bari). For another 5 domestic routes (Fiumicino-Venezia, Linate-Palermo, Linate-Bari, Linate-Napoli and Napoli-Palermo) the flight

frequencies remained substantially the same; there was, however, a partial reduction in the number of seats offered. On the last five domestic routes (Linate-Brindisi, Linate-Catania, Malpensa-Brindisi, Catania-Venezia and Palermo-Venezia) the agreement did not seem to have caused significant reductions in supply. In conclusion, the Authority found that, as far as some domestic routes were concerned, the specific type of code sharing stipulated between Alitalia and Volare significantly reduced competition between the two air carriers, considering the very limited degree of competition that characterized such routes and the existence of significant barriers to entry. Regarding the evaluation of the request for an exemption under Art. 4 of Law 287/90, the Authority decided that the request could be granted for the duration of the agreement (1° July 2002 - 25 October 2003) but only for five of the domestic routes concerned (Catania-Venezia, Palermo-Venezia, Linate-Brindisi, Malpensa-Brindisi and Napoli-Palermo), since this led to improvement of supply conditions and to benefits being passed on to consumers. In addition, the restrictive effect deriving from the agreement did not appear disproportionate to the benefits provided in terms of increased supply. Finally, in the case of the 8 international routes involved, the Authority believed that the agreement was not restrictive of competition, since there were a number of qualified international carriers and no significant barriers to entry.

*Aviapartner- Guglielmo Marconi Airport , Bologna*

In May 2003, the Authority found an abuse of dominant position in the market for ground handling services by Guglielmo Marconi Airport of Bologna Spa (SAB) – the exclusive licensee of the Bologna airport.

For the purposes of the investigation, the relevant market was defined as the management of the airport infrastructure and the supply of ground handling services at SAB. SAB was found to be in a dominant position in both markets as it was the exclusive licensee and the main handling operator.

The investigation showed that SAB took advantage of its dominant position causing an unjustified delay in allowing entry of Aviapartner and, after entry took place, hindering its activity. In February 2000 Aviapartner - which had signed an agreement with KLM - submitted a request to SAB, planning to start supplying its ground handling services in the Bologna airport in April. In order for Aviapartner to start its activity in time, SAB should have provided the company with the necessary space and equipment, as well as transfer part of its staff to the new arrival, as required by Art. 14 of legislative decree 18/99. Nonetheless, SAB delayed the procedures concerning personnel transfer and the allocation of the working space required by Aviapartner to start its activity. At the same time, SAB pressured KLM to cancel the contract with Aviapartner for ground handling services. Aviapartner was able to start operating in the month of November 2000, i.e. nine months after the request for access. The exclusionary nature of SAB's practices was even more evident when compared to the access conditions reserved for Bologna Airport Services Spa (BAS), a ground handling service provider controlled by SAB itself. BAS entered the Bologna Airport a few months after Aviapartner submitted its access request and the procedures for staff transfer and assignment of work space took little more than a month.

After Aviapartner initiated its activity, SAB abused its position as exclusive licensee of the airport, trying to dissuade Air France from using Aviapartner's ground handling services (predicting serious consequences such as security problems and relocation of the airline's check-in counters to an inconvenient area). Air France actually gave up the idea of substituting the service supplier, maintaining its relationship with BAS. SAB's practices have in fact partly prevented the benefits expected from the liberalization of

ground handling services pursued by directive 96/67/EC and by legislative decree 18/99. Given the seriousness of this conduct and the fact that it occurred right at the start of the liberalization process, the Authority decided to fine SAB for a total of 880,000 euro.

*Report on the liberalization and privatization of airports*

In January 2004, the Authority submitted a report concerning the liberalization of airport services to Parliament and the Government. In the report particular attention was paid to the following issues: a) license granting methods in relation to the management of airport infrastructures and license duration; b) the risk that the dominant position held by the airport infrastructure service provider might be extended to contiguous markets.

In relation to license granting for airport infrastructure management, the Authority said that, for many airports, the licensees had been chosen without a competitive tender process. As in many other sectors, the Authority held that, in the case of a natural monopoly, a company's power on the market could only be regulated by public tenders (competition *for* the market), with appropriate control over post-contractual exploitation. Accordingly, the Authority strongly recommended the use of public tenders based on objective, transparent and non-discriminatory criteria, concluded with a motivated decision, in order to choose the firm best able to carry out the activities, according to the objectives defined by the licensor.

Concerning the duration of the license contract, the most recent airport infrastructure licenses were for forty years. The Authority suggested that, despite the significant investments required to enter the market, the length of the licence was unjustifiably long. Furthermore, allowing for cost recovery is not an obligatory requirement for the determination of license duration, since the value of the concessionaire's investments at the time of the tender could be used to set the starting bid.

With respect to the supply of services requiring access to unique infrastructure, the Authority pointed out the need for separate accounts between the activities carried out under a monopoly and those carried out in competition; the Authority also noted the need to apply analytical accounting systems to such services, in order to determine fees based on costs. Effective action to protect and promote competition also requires that the airport infrastructure service provider be prevented from extending its dominant position to contiguous markets, especially the markets of ground handling and commercial services in the airport, in order to allow the full realization of airport liberalization process.

## RAIL TRANSPORT

*Report on tenders for regional rail services*

In July 2003, the Authority issued a report on tenders for regional rail services. The relevant regulations state that, in order to choose the provider o of local railway transportation services, non-discriminatory public competitive tenders must be organized, and set 31 December 2003 as the deadline for the preparation, by local administrations, of all the preliminary administrative, financial and technical requirements.

The Authority found that most Regions did not even meet the preliminary conditions necessary for organizing the competitive tender procedures, since neither the local administrations nor the rail transport companies took action during the transition period in order to acquire the rolling stock necessary for providing services. Almost all the material that must be used is in fact the exclusive property of Trenitalia Spa, part of the Ferrovie dello Stato group, holder of a legal monopoly until liberalization. Furthermore, the Authority observed that competitors to Trenitalia would have found it difficult to participate to the tenders because of the long time required to produce new rolling stock and the the fact that a secondary market for rolling stock did not exist. These difficulties threaten the liberalization of local rail transportation, both by interfering with the preparation of calls for tender and hindering the participation in competitive tenders by railways other than Trenitalia.

The Authority underlined the importance of speeding up the liberalization process in the sector as much as possible, carrying out all calls for tender by the legal deadline of 31 December 2003 in a way that does not discriminate against competing companies. To achieve this goal, when rolling stock is in the possession of Regional Administrations, , the license should be assigned to the company able to guarantee the most efficient service. Where the local administration does not have any rolling stock, whether a potential provider of rail services owns or not the necessary rolling stocks at the time of the bid should not be a discriminating factor in awarding the concession. The Authority noted that the concession should be awarded to the bidder with the most advantageous economic conditions, allowing the winner to start service in the shortest possible time (24-36 months).

*Report on the separation of rail transportation infrastructure and service management*

In August 2003, the Authority issued a report on the contract stipulated in August 2002 between the Rete Ferroviaria Italiana Spa (RFI) and Trenitalia Spa on its compliance with competition rules. In the contract, Trenitalia leased 61 loading terminals (areas and buildings included) in various Italian regions.

In the report, the Authority noted first of all that EU and Italian rules on rail transportation liberalization are based on the principle of separation between infrastructure and transportation services, with equal and non-discriminatory access to the rail infrastructure by all requesting rail companies. Notwithstanding the evolution of the regulatory framework for rail transport liberalization, the Authority said that the current organization of the FS Group is not in compliance with the principle of independence and separation of decision making, since RFI and Trenitalia are still a single economic body. The Authority noted that granting Trenitalia a good part of the loading terminals contradicts the principle of separation between infrastructure and transportation services. It is especially important that the functions providing equal and

non-discriminatory access to the rail infrastructure be entrusted to a company which is fully independent from the rail transport companies.

The Authority therefore stated that allowing Trenitalia to manage a significant part of the Italian terminal network, as under the RFI-Trenitalia contract, , leads to an insufficient separation, both in form and in substance, between RFI and Trenitalia and between both of them and their holding company, FS. This grants a competitive advantage for Trenitalia. In conclusion, in order not to lose the positive effects of liberalization, the Authority once again emphasized that accounting and corporate separation must be considered intermediate steps towards a more significant propriatory separation between the rail infrastructure and transport services.

## SHIPPING

*Report on general interest services in port areas*

In August 2003, the Authority submitted a report concerning distortions of competition deriving from certain provisions of port legislation (Law 84/94). These rules launched a process of progressive liberalization of general interest services within ports, allowing port authorities to grant concessions for these services through public competitive tenders. The law allowed port authorities to continue to provide all or some of these services themselves, using any personnel made redundant. The Authority said that while this provision may have been justified during the initial phase of the reform in order to protect employees from layoffs, now, with the law in force for almost a decade, it appeared to conflict with principles of competition, since redundant employees should have been able to find another job.

*Report on public ferry services in the Gulf of Naples*

In November 2003, the Authority issued a report on the organization of ferry services in the Gulf of Naples by the Campania Regional Government. In a March 2001 document, the Campania Region defined the "minimum" requirements for public ferries for service between the Neapolitan coast and the islands of the Gulf of Naples; the document redefined timetables (identifying frequencies in terms of maximum and minimum time lags between one departure and the next) and fares (introducing a season ticket for residents and commuters, increasing the standard fare for the hydrofoil services and defining the minimum requirements for collective fares).

The Authority considered that the organization of these services was not in line with the principles of transparency and proportionality. The Region, in fact, eliminated price competition for services meant to be offered in competition. Further, "minimum service" licenses were granted to the ship-owners who were already operating Gulf routes, without competitive bid procedures and without specifying a time limit for the license contract. The Authority underlined that, in the presence of public service obligations, it is better to provide an explicit and transparent subsidy to the concession holders; this subsidy must be proportional to the social benefits achieved and should not reduce the competitive leeway available for offering new services. On this point, the Authority expressed the expectation that competitive tender procedures would be used to grant "minimum service" contracts, in order to minimize the subsidy and to select the best applicant in a transparent and non-discriminatory way.

## ROAD TRANSPORT

*Report on anticompetitive practices in the market of taxi service*

In March 2004, the Authority issued a report concerning certain anticompetitive practices in taxi service. According to current regulations, in order to provide taxi services an individual needs an appropriate license issued by a City Administration. The City Administration thus defines: the number and types of vehicles allowed, the requirements and the conditions for granting a license, the way the service has to be provided and the criteria for setting taxi fares. The license covers only a single vehicle and multiple licenses cannot be issued to the same individual.

The Authority first noted that taxi services are generally characterized by very little opening to competition, as shown by evidence of high prices and unmet consumer demands. In order to foster a gradual process of liberalization, the Authority made a number of recommendations. First of all, the number of licenses should be increased; furthermore licences should be allocated through auctions whose proceeds could be used to provide a lump-sum compensation to current license holders. A different solution is an increase in the number of licenses through free distribution of a second license to current license holders; these in turn could either sell the new license or use both licenses by allowing another operator to work under the second license while maintaining ownership. In order to carry forward these proposals current regulations would have to be changed so as to allow a single individual to hold more than one license.

Finally, the Authority suggested a series of additional measures aimed at decreasing prices for taxi services. The suggested measures include: *i*) issuing part-time licenses, in order to increase the supply of taxi service in periods of peak demand; *ii*) eliminating the current territorial segmentation, in order to allow licensees to provide taxi service outside of the geographic district for which the license was originally issued; *iii*) granting licenses for the provision of innovative taxi services; *iv)* promoting services alternative or complementary to traditional ones, such as “taxibuses” and group taxi service. These initiatives could lead to the development of a wider and more diversified supply in terms of urban public transportation services as well as a decrease in the average prices to the benefit of consumers.

## TELECOMMUNICATIONS

*Telecom Italia-Megabeam Italia*

In August 2003, the Authority approved the acquisition of Megabeam Spa by Telecom Italia Spa conditioning it on a number of requirements. Megabeam Spa operates in the market of supply of R-LAN infrastructures and related wi-fi services.

Following the investigation, the Authority held that the notified merger affected the following markets: *i)* the market of public wi-fi services, which provide broadband wireless access from a laptop or a mobile phone; these services are generally aimed at traveling business users requiring mobile data communications and are supplied through coverage of sites with a significant number of potential users, through contracts with the sites' owners or through roaming agreements with existing wi-fi service providers (known as WISP); *ii)* the upstream market of supply of local broadband access and connectivity, especially through x-DSL technology, local direct broadband circuits, fiber optics, satellite and wireless connections; *iii)* the market of supply of final consumer broadband services for Internet access, which are also offered integrated with wi-fi services, by operators who are also active in the wi-fi access market.

The Authority decided that the proposed concentration could have led Telecom Italia to develop a dominant position in the market of public wi-fi service access, since important commercial sites (airports and hotels) were controlled by both Megabeam and Telecom Italia. Furthermore, the operation would have allowed Telecom Italia to strengthen its dominant position in the upstream market of supply of access services and broadband connectivity as well as in the downstream market of supply of fixed broadband Internet access for consumers; this would be done by offering integrated access packages which could not easily be matched by competitors, including wi-fi access services located in strategic sites and fixed broadband access services. The Authority therefore held that the notified merger could jeopardize the competitive development of the newborn wi-fi service market. Therefore, the Authority decided to authorize the merger on condition the parties fully implement the following measures: a) to renounce all current and future exclusive contracts in favor of Telecom Italia and Megabeam, for the use of wi-fi services, R-LAN infrastructures or third party R-LAN networks; b) obligatory corporate separation of all activities involving supply of wi-fi services by Telecom Italia and Megabeam; c) the obligation, for Telecom Italia and Megabeam, to offer roaming contracts at fair and non-discriminatory technical/economic conditions, on the basis of the principle of equal treatment of all competitors.

Telecom Italy did not go forward with the proposed acquisition.

*Opinion on the "Code for electronic communications"*

In May 2003, following a request by the Ministry for Communications, the Authority issued an opinion on the "*Proposed legislative decree concerning the Code for electronic communications, according to the new European regulatory framework".* The Authority, first of all, drew attention to the conflict between national and EU competition law with particular reference to the legislative decree's use of the "principle of minimum market distortion", erroneously considered to be a principle of a general character. The relevant EU legislation applies it exclusively to questions of cost sharing in funding universal service obligations. The

Authority further considered that the creation of a special regulatory regime for the supply of networks or electronic communications services by operators subject to total or partial public control was contrary to Community directives; EU law, in fact, applies the same regulatory framework to both public and private operators.

In relation to the management of radio frequencies for electronic communications services and, in particular, to the trading of bandwidth rights (so called "*frequency trading*"), the Authority held that the proposal conflicted with EU principles on general authorizations. Under the proposal, telecommunication operators were the only subjects that may trade rights of use for radio frequencies. Furthermore, the draft limited trading to those authorized to supply a network with analogous technologies (i.e. the current mobile operators). EU regulation instead allows frequency trading among all authorized operators.

Concerning the distribution of regulatory tasks, the Authority observed that the proposed provisions conferring regulatory power to the Ministry for Communications were not fully compatible with EU regulations, which state that all national legislative authorities must be legally and functionally separated from the bodies supplying electronic communications networks or services, since the Italian Government still controls some telecommunication companies. The Authority also drew attention to the fact that member States should notify to the Commission all national regulatory authorities and their respective responsibilities.

*Opinion on the right-of-way for the installation of telecommunication networks*

In August 2003, the Authority sent Parliament and the Government an opinion concerning distortion of competition originating from the Standard Contract which ANAS (the highway public agency) had, since the year 2000, imposed on operators wishing to be granted right-of-way for the construction of telecommunication networks along the highways and road systems controlled by ANAS. The contract lasted 29 years and imposed costly financial conditions such as the payment of an annual fee - proportional to the length of the network to be installed - and the payment of a variable fee calculated on the basis of the yearly turnover realized on that network.

The Authority suggested that, in order to guarantee the competitive development of the newly liberalized market of fixed telecommunications networks, new operators must be granted the possibility to develop their own infrastructure, alternative to the incumbent's networks. Only effective upstream infrastructure market competition can complete the process of liberalization of the market of fixed telecommunication services. This aspect is also particularly important for the full development of the fixed broadband telecommunication network market. The Authority held that the technical/economical conditions ANAS imposed on telecommunication operators did not comply with Italian and EU rules, as they were particularly burdensome for new entrants and disproportionate to conditions applied in most other Member States. The Authority therefore invited the Government to exercise its supervisory power over ANAS in order to bring the agency into compliance with national and EU provisions. .

## Radio, television and publishing rights

*Report on the reorganization of the distribution of the daily press*

In April 2003, the Authority sent Parliament and the Government a report concerning legislative decree n. 170/01 on "*The reorganization of the distribution of the daily and periodical press"* and on the implementation provisions adopted by some Regions. According to the decree, the press cannot be sold in the absence of a special licence to be issued by City Administrations based on highly discretionary factors such as: population density, urban and social characteristics of the area, sales figures for daily newspapers and periodicals over the previous two years, and the presence of other non exclusive outlets.

The Authority suggested that the decree be modified where it aimed to predetermine the structure of supply by restricting market access on the basis of quantitative criteria. The Authority also suggested that the implementation provisions adopted by some Regions may have further hampered the already limited liberalization of the sector pursued by the decree, by introducing unjustified further restraints. In particular, some Regions introduced a simplified procedure for granting a license to those outlets that had previously taken part in the test phase; this practice excluded all subjects that had applied to participate in the test phase, but were unable, in some cases for reasons beyond their control, to participate. Further, in defining the indicators which municipalities were to use in assigning licenses throughout their territory, many Regions predetermined the maximum number of outlets for each area, thus adding further barriers to entry..

## FINANCIAL SERVICES - INSURANCE PRODUCTS AND PENSION FUNDS

*SAI Società Assicuratrice Industriale-La Fondiaria Assicurazioni*

In June 2003, following a request received from Mediobanca Banca di Credito Finanziario Spa, Premafin Finanziaria Spa and Fondiaria-Sai Spa, the Authority revoked the conditions under which, in December 2002, it had agreed to authorize the acquisition by Sai of 29,97% of Fondiaria's shares and of the subsequent incorporation of Fondiaria into Sai *[SAI Società Assicuratrice Industriale-La Fondiaria Assicurazioni, in Bulletin nr. 51-52/2002.]*. In particular in December 2002, the Authority had found that: *i)* given Mediobanca's *de facto* control over Generali, the joint control of Fondiaria-Sai by Mediobanca and Premafin could possibly lead Mediobanca to acquire a dominant position in the market of non-life insurance, through Generali and the newly merged Fondiaria-Sai; *ii)* this dominant position could have significantly and permanently reduced competition in the non-life insurance sector, considering the large market share, the significantly increased degree of concentration and the existence of many elements of rigidity in the insurance market, such as: distributional barriers to market entry, market share stability and the existence of personal and financial relationships. Given these elements, the Authority had authorized the operation conditional on the adoption of some measures aimed at preventing the development - through Generali and Fondiaria-Sai - of a dominant position by Mediobanca in the market of non-life insurance.

A number of developments allowed the Authority to reconsider its December 2002 conclusions. . First, the Authority found that Mediobanca's share in the new entity had been reduced, through subsequent operations, from an initial 11% to 1.99%. Considering Premafin's significant share holding in Fondiaria-Sai, the Authority considered Mediobanca's share small enough to prove that there was no joint control by Mediobanca and Premafin over Fondiaria-Sai.

Second, the reimboursement of Premafin's debt to Mediobanca excluded the possibility of Mediobanca directly influencing the commercial strategy of Fondiaria-Sai because of financial ties. Furthermore, the fact that Premafin had diversified its debt to four banks meant that Mediobanca could no longer directly exert decisive influence on Fondiaria-Sai activities, since it was no longer even a major shareholder. Therefore, in consideration of the substantial modifications that had occurred in the ownership structure of Fondiaria-Sai, compared to the situation examined in the decision of December 2002, the Authority considered that Premafin and Mediobanca could no longer exercise a joint control over Fondiaria-Sai, and revoked the conditions it had imposed in that decision.

*Survey on the car insurance sector*

In April 2003, the Authority concluded a general fact-finding survey on how to increase competition in the market for compulsory third party liability car insurance (RCA). -The third non-life insurance Directive 92/49/EEChad liberalized insurance fees, previously subject to a system of price regulation. The Authority pointed out that such liberalization, initiated in Italy in July 1° 1994, had led to a very significant increase in RCA premiums, with little innovation in service and unchanged product quality. In particular, third-party liability car insurance fees doubled between 1994-2003. Such a situation should have led to the entry of new operators and significant variations in the market shares in favor of the companies offering the lowest

prices. Yet the analysis revealed a significant stability of market shares and very little entry. The Authority observed that these factorswere enough to prove the existence of significant restrictions of competition in the Italian RCA market. According to the investigation, the reduced competition in the market was mainly to be attributed to: *i)* the existence of anti-competitive practices carried out by the companies and already fined by the Authority in 2000 *[Automobile liability Insurance, in Bulletin n. 30/2000.]*; *ii*) the widespread existence of exclusive relationships between producers and distributors. The exclusive distribution agreements increase search costs, contributing to the rigidity of demand, in a context where overall market demand is already inelastic due to the fact that car insurance is compulsory. Because of the rigidity of demand, insurance companies have been able to gradually shift cost increases onto consumers without losing customers.

The problem in car insurance is that it is difficult for insurance companies to provide incentives for keeping down the payments they are obliged to make for each claim. All parties involved (claimants and car repair shops) have incentives to increase, not reduce, the amounts they ask to be refunded (. This leads to the elimination of one of the main areas where competition could have a beneficial effect: reduce the cost of claim payments. The policy holder is, in fact, not interested in the way payments for damages are made and there are no direct relationships between companies and claimants; therefore, insurance companies are not motivated to improve the way payments for damages are made. The occasional nature of the relationship between companies and claimants may allow claimants to engage in moral hazard behavior: claimants may in fact try to be over-compensated with respect to the actual damage suffered. ..

In order to overcome these critical aspects, the Authority suggested the introduction of instruments capable of providing companies with greater incentives for cost control and customers with greater opportunities for competitive comparisons between companies. In particular, the Authority identified two main criteria on which a new and alternative arrangement between companies could be based: *i)* insured subjects could be compensated directly by their own companies; *ii*) insurance companies could receive a fixed predetermined lump-sum compensation from the insurance company of the liable party. In this way the insurance company would be strongly interested in minimizing the compensation effectively paid out to the claimant, profiting from any savings with respect to the received lump-sum compensation. For this reason, the Authority held that a rearrangement of distribution channels and a radical innovation in direct compensation mechanisms could contribute to foster competition at the distribution level, encourage companies to compete for service quality and eliminate the many inefficiencies of the current system.

*Opinion on compulsory insurance against risks related to natural disasters*

In November 2003, the Authority sent Parliament and the Government an opinion concerning a draft law regarding compulsory insurance against risks related to natural disasters. More specifically, the draft law provided for: *i)* the compulsory addition of the coverage of damages from natural disasters to insurance policies against fire damages; *ii)* the definition of the essential elements of the insurance contract (risks covered, amount of capital insured, deductibles and maximum insurance value, methods of claim payment).

The Authority suggested that the proposed regulation, while aiming to guarantee universal insurance coverage, imposes the requirement only on those who offer an insurance policy against fire damages, even though fire and natural disaster risks are independent. The decision to link the two policies creates a tie-in between two products, unjustified by any technical relationship, since one event could occur without the

other. Further, the Authority noted that the strict definition of all aspects of the insurance contract contradicts the stated aim of opening the insurance market of natural disasters. This restricts freedom of choice both among consumers in terms of the policy which best suits their needs and among companies in terms of differentiation of products offered.

## FINANCIAL SERVICES

*Report on the distortion of competition resulting from article 24, par. 1 of law n. 7/2002 of the Sicilian Region*

In December 2003, the Authority issued a report concerning Law 7/2002 of the Sicilian Region, containing regulations regarding public works. In particular, the law established a set of rules regarding financial guarantees provided by companies participating in tenders that are not regulated by Community rules. According to this law, when the starting bid is over 150,000 euro, but below the Community threshold, companies must submit a temporary deposit equal to 0,50% of the total amount of the work, through a bank guarantee. The Authority noted that, when the bids were below the Community minimum threshold, the regional law adds a provision which discriminates in favor of the banks, given that a guarantee from another financial institution would not be allowed. Furthermore, the advantage provided to banks does not appear to be justified, as demonstrated by Community regulation for tenders exceeding the Community's minimum threshold where financial guarantees can be provided by any financial institution, not just banks.

## PROFESSIONAL AND BUSINESS SERVICES

*Code of conduct of the -Italian Federation of Professional Real Estate Agents*

In March 2004 the Authority concluded an investigation concerning certain provisions of three trade associations' codes of conduct. In particular, the codes of conduct of the Italian Federation of Professional Real Estate Agents (FIAIP), the Italian Federation of Business Mediators (FIMAA) and of the National Association of Business Agents and Mediators (ANAMA) contained: a specification of minimum commissions charged when providing real estate intermediation services; a non-competition clause among associates; and a ban on advertising free real estate intermediation services.

Current law provides that, where no agreement exists between the contracting parties, the commission to be paid to the broker and the division of this commission between the contracting parties must be determined by the real estate agents' associations which have the largest national membership (ANAMA, FIAIP and FIMAA), taking into account local custom.. During the investigation, the Authority first ascertained that these commissions which effectively had to be interepreted as minimum fees, were anticompetitive. . As far as the non-competition agreement was concerned, the codes of conduct banned members from accepting clients who were already dealing with another associated firm. Further, the Authority ascertained that the FIMAA code of conduct contained a general ban on advertising free services. It should be noted that, in November 2003, ANAMA had approved a new code of conduct in which the contested clauses were eliminated.

Concerning the codes of conduct provisions relating to commissions received by associates, the Authority determined that they were seriously anti-competitive, inasmuch as they aimed to eliminate price comparison of services offered by different operators. These provisions violated the law governing this sector, which allowed a legal completion of the contract only if no agreement had been reached by the contracting parties. Moreover, the Authority considered that the non-competition clause limited the chance for companies to compete, regardless of whether the contract stipulated was exclusive or not. The Authority determined that these clauses, which had to be respected by all associated members and were enforced by various forms of internal and external monitoring and fines, limited freedom of choice for consumers, who were prevented from using services of more than one real estate agent at a time, and were therefore deprived of the benefits in terms of quality and price of services offered. Finally, in relation to the broad ban on advertising free services, the Authority found that this provision affected marketing strategies, limiting price and discount strategies.

In calculating the fine, the Authority treated ANAMA differently, since this association had removed the anticompetitive provisions from its code of conduct before learning of the results of the investigation. FIAIP and FIMAA, on the other hand, had not taken any such action. The Authority therefore fined FIAIP 130,000 euro, FIMAA 10,000 euro and ANAMA 1,000 euro.

*Opinion on regulation of the private security sector*

In December 2003 the Authority sent Parliament and Government some observations regarding the draft law containing “Rules for Private Security” (AC 4209). Preliminary comments from the Authority addressed several potential distortion effects due, in particular, to the planned creation of registries for enrolment of subjects belonging to the different job profiles in the sector. On this count, the Authority observed that the planned creation of registries for the different professional roles did not generally appear necessary for all categories of operators. The creation of these registries can be considered at most justified for armed services, in view of the safety issues requiring particularly strict supervision.

The Authority further suggested that certain rules covering access to the activity and the setting of rates were too restrictive. While public safety concerns may have justified a limit on the total number of private security guards and other armed professionals, no such justification existed for limiting the number of authorized unarmed services. The Authority therefore suggested limiting the restriction to cover armed security personnel only, and expressed hope that authorization would be objective and automatic where established requirements are met. As for rate fixing, the Authority expressed hope that there would be no “approval process” of price lists for various services by the authority responsible for issuing licenses. Such approval is not in and of itself able to ensure that firms provide a higher quality service. In order to protect customers from especially high prices in situations of information asymmetry or weak bargaining positions, nothing more would be required than the public display of the prices offered separately by each firm.

## RECREATIONAL, CULTURAL AND SPORTS ACTIVITIES

*Report on the motor racing sector*

In April 2003, the Authority issued a report concerning distortions of competition in the sector of non-Formula 1 motor racing. The distortions are mainly to be attributed to the organizational structure of Automobile Club d'Italia (ACI) and to its actions as the national federation responsible for the motor sports. In particular, some ACI bodies, which include the main operators in the sector (pilots, teams, manufacturers) have rule-making power over certain important aspects of race organization: issuing permits, setting national race dates and the management of race-related sales. The Authority observed that the same subject acts both as commercial operator and as member of the regulatory body for the sector, leading to a situation of potential distortion of competition.

*Opinion on the regulation on the teaching of sports*

In November 2003, the Authority provided an opinion to Parliament, concerning proposed legislation regulating the teaching of sports. In particular, a number of proposals in front of Parliament aimed at regulating access to teaching, creating national and regional professional registries, in some cases divided into specific specialties; registration in such official lists constituted an essential requirement in order to exercise the relevant activities. Some proposals also contain provisions aimed at indirectly setting fees for the operators.

The Authority first noted that, the restrictions imposed by these draft laws violated competition principles. In particular, the Authority emphasized that in sports training the right to health and physical safety of practitioners can be sufficiently protected through legislation which does not impose registration requirements or exclusivities. Possible alternative legislative solutions could include, for example, supervision of sports facilities to guarantee that they meet hygiene and health standards, as well as the presence of a physician at sports facilities.

*Report on the restructuring of the cinema sector*

In December 2003, the Authority provided comments to Parliament and the Government regarding certain provisions contained in draft legislation on the cinema sector. In particular, the proposal provided for the setting up of a special Commission for, among other tasks, identifying the locations for the opening of new cinemas, the reopening of closed cinemas and the renovation of existing ones, in each Region. Further, Regions were given the power to determine the licensing rules for the opening of new cinemas and for the renovation or enlargement of existing ones, subject to certain conditions: a) a predetermined ratio of the number of cinemas in relation to population; b) maintenance of a minimum distance between the new cinema and those already existing.

The Authority observed that the criteria Regions should follow when issuing licenses, the Authority stated that they strongly limited access to the market for new operators. These parameters seemed in fact to be aimed at predetermine the number of cinemas present in the territory, preventing the market from effectively meeting demand.

## CATERING

*Compass Group Italia-Autogrill-Ristop*

In July 2003, the Authority concluded an investigation on the involvement of Autogrill Spa in finding a "proper" acquirer for Ristop Srl, one of its main competitors in the market for refreshments/restaurant services on the highways, after the Authority had prohibited the proposed acquisition of Ristop by Autogrill itself. Entry in that market requires a legal authorization for the use of the service areas. The authorization can be direct (license) or indirect (contract). The prevailing form of market entry is the indirect one through contracts with the petrol companies holding licenses for the areas.

Traditionally, Autogrill was the dominant operator in the supply of highway refreshments/restaurant services, with about 80% of the sector's total national turnover. Ristop was the second operator with a share of 5%. The market was characterized by a high degree of concentration and by the stability of Autogrill's dominant position, due to the fact that new entry could only occur by acquiring a license.

During the investigation, the Authority found that Autogrill tried to protect its market position from potential competitors even after the Authority had prohibited its merger with Ristop. In fact, after the prohibition of the proposed merger, Autogrill engaged itself in a selection process to choose the company which, by acquiring control of Ristop, would become its direct competitor. Autogrill's illegal strategy aimed at protecting its near-monopolistic position from the entry of effective competitors in the market.

During the course of the investigation Autogrill terminated its conduct. First, it interrupted all negotiations with companies previously contacted for the concession of the contracts held with Ristop and, subsequently, it concluded a transaction agreement with Ristop for the resolution of the preliminary purchase contract. In the meantime, new operators had entered the market and control of Ristop had passed to another company, which had not been involved in the negotiations initiated by Autogrill.

Nevertheless, the Authority considered that the practices of the dominant operator, from the date of the drawing up of the contracts (February 2002) until the contracts were terminated (October 2002), constituted an exclusionary strategy, albeit unsuccessful, aimed at preventing, or at least controlling, the entry of new competitors to the highway food service markets. The Authority therefore held that these practices violated Art. 3 of Law 287/90.