ANNUAL REPORT
2009

1. Antitrust enforcement in 2009

Summary

In 2009, the Italian Competition Authority (the "Authority") assessed 514 mergers, 13 agreements and 7 alleged abuses of dominant position. Furthermore, the Authority concluded five sector inquiries in 2009.

Activity of the Authority	2008	2009
Agreements	12	13
Abuse of dominance	13	7
Mergers	842	514
Separation obligations	11	11
Sector inquiries	2	5
Non compliance	1	-

Proceedings concluded in 2009 (distributed by category and outcome)

	Non-violation of the law	Violations, commitment decisions	Outside the scope of the law	Total
Agreements	2	10	1	13
Abuse of dominance	-	5	2	7
Mergers	479	1	34	514

Agreements

In 2009, the Authority concluded eleven proceedings concerning agreements[1].

In five cases, the Authority found an infringement of competition law. Four cases concerned violations of article 101(1) of the Treaty on the functioning of the European Union ("TFEU")[2], formerly article 81 of the EC Treaty, while one case concerned a violation of article 2 of law no. 287/90[3] (the Italian equivalent of article 101 of the TFEU). Having regard to the seriousness of the five cases involving hard-core cartels, the Authority imposed fines totaling EUR 27,096,583.00 to the companies involved.

There was one case in which the Authority found no evidence of infringement of the competition law[4].

In five other cases, the proceedings led to decisions pursuant to article 14-*ter*, paragraph 1 of law no. 287/90, with the Authority accepting the commitments proposed by one of the interested parties without establishing a violation[5].

Ten investigatory proceedings were still under way as of 31 December 2009, seven of which pursuant to article 101(1) of the TFEU[6], and three pursuant to article 2 of law no. 287/90[7].

[1] Costa Container Lines /Sintermar-Terminal Darsena Tuscany; Organization of maritime service in the Gulf of Naples; Price lists for pasta; Battery recycling; MAV Check-Interbank fees; Auction Houses; FVH-Liquigas-Butangas-Quirisi/I.PE.M; National Order of Psychologies-Code of ethics restrictions on fee determination; Gargano Corse/ACI; Order of Medical Surgeons and Dentistry in the Province of Bolzano; Soccer League/Chievo Verona.

[2] Costa Container Lines /Sintermar-Terminal Darsena Tuscany; Price lists for pasta; Battery recycling; Soccer League/Chievo Verona;

[3] Order of Medical Surgeons and Dentistry in the Province of Bolzano.

[4] Auction Houses.

[5] Organization of maritime service in the Gulf of Naples; MAV Check-Interbank fees; Auction Houses; FVH-Liquigas-Butangas-Quirisi/I.PE.M; National Order of Psychologies-Code of ethics restrictions on fee determination; Gargano Corse/ACI.

[6] LPG Heating prices in the Region of Sardinia; Retail sale of cosmetic products; National Council of Geologists-Code of Conduct of Ethics restrictions on fee determination; Credit Cards; International Logistics; International Pagobancomat Fees; Interbank "Riba-RID-Bancomat" Accords.

[7] Transcoop-Transport Services for the Disabled; Order of Lawyers in Brescia; Piedmont Region ASL-Tender for the provision of anti-flu vaccines.

Agreements investigated in 2009, by economic sector (number of completed proceedings)

Sector	
Food and beverages	1
Television rights	1
Electricity and gas	1
Financial services	1
Professional and entrepreneurial services	1
Waste disposal	1
Healthcare and other social services	1
Miscellaneous services	1
Recreational, cultural and sports activities	1
Transport and vehicle rentals	2
Total	**11**

Abuses of dominance

In 2009, the Antitrust Authority concluded five investigatory proceedings concerning abuses of dominant position[8].

In one case, the Authority found an infringement of article 102 of the TFEU (formerly 82 of the EC Treaty)[9] and imposed fine of EUR 285,000.

In four other cases, pursuant to article 14-*ter*, paragraph 1 of law no. 287/90, the Authority accepted the commitments proposed by one of the parties without finding an infringement[10].

[8]Gargano Corse/ACI; The new Naval Mechanics/Mediterranean constructions sites; NTV/RFI-Access to the Naples node; Exergia/Enel-Protection Services; Italian Postal Service-Higher Fees for C/C Bill Payments.
[9] The new Naval Mechanics/Mediterranean constructions sites.

Abuses investigated in 2009, by sector (number of completed proceedings)

Sector	
Electricity and gas	1
Postal services	1
Recreational, cultural and sports activities	1
Transport and vehicle rentals	2
Total	**5**

The Authority also concluded one proceeding verifying compliance with previously accepted commitments pursuant to article 14-*ter*, paragraph 1 of law no. 287/90[11].

On December 31, 2009, thirteen proceedings concerning alleged abuses of a dominant position pursuant to article 102 of the TFEU were pending[12].

Mergers

In 2009, the Authority assessed 514 mergers. The Authority found no violation of the law in 479 of these cases, while in 34 cases there was no ground for further proceeding. In one case the Authority carried out an in-depth investigation pursuant to article 16 of law no. 287/90, resulting in the authorization for the merger subject to the undertakings' compliance with specific conditions[13].

[10] Gargano Corse/ACI; The new Naval Mechanics/Mediterranean constructions sites; NTV/RFI-Access to the Naples node; Exergia/Enel-Protection Services; Italian Postal Service-Higher Fees for C/C Bill Payments.
[11] Tele 2/Tim-Vodafone-Wind.
[12] Selection procedures for the National League of Professionals 2010-11 and 2011-12 Championships; The Plasterboard Market; TV VT Account/Sky Italia; Sorgania/A2A; Sorgenia/Acea; Sorgenia/Italgas; Sorgenia/Hera; Sorgenia/Iride; TNT Post Italia/Italian Postal Service; T-Link/Big Fast Ships; Giochi24/Sisal; FIEG-Italian Federation of Newspapers Publishers/Goggle; Sky Italia/Auditel
[13] Central Institute for Italian Industrial Cooperative Banks/SI Holding.

The Authority also concluded eight proceedings pursuant to article 19, paragraph 2 of law no. 287/90, for non-compliance with the obligation of prior notification of mergers, finding in all cases an infringement and imposing fines totaling EUR 45,000.

On 31 December 2009, four proceedings were pending: three for non-compliance with the obligation of prior notification of mergers[14] and one for non-compliance with a previous decision imposing measures[15].

Separation obligations

In 2009, the Authority carried out four proceedings concerning the alleged non-compliance with the duties of prior notification laid down by article 8, paragraph 2-*ter* of law no. 287/90[16]. This provision obliges legal monopolies and companies entrusted of services of general economic interests to notify legal separation of monopoly activities from liberalized activities.

All proceedings were concluded establishing an infringement and imposing fines totaling EUR 44,000.

On 31 December 2009, one proceeding was pending in this area[17].

Sector inquiries

In 2009, the Authority concluded five sector inquiries pursuant to article 12 of law no. 287/90. The investigated sectors were professional services, newspapers and periodicals, prepaid cards, natural gas storage, short message and mobile data services.

On 31 December 2009, four sector inquiries were in progress[18].

Competition advocacy

In 2009, pursuant to articles 21 and 22 of law no. 287/90, the Authority issued 63

[14] Esselunga/21 Sales Points (59 Company Branches); New Motors/Company Branch of Canella Auto; T.T. Holding/TM Car.
[15] Banca Intesa/San Paolo IMI.
[16] Trambus/Public GT Bus Activities; Trambus Engineering-Trambus Electric; Acsm-Agam/Agam Sales; Egea Energy and Environmental Management Division/S.E.P. Piossasco-Ege.Yo Energy Company.
[17] Agsm Verona.
[18] The state of liberalization of the electric energy and natural gas sector; Local public transportation; Hospital healthcare services sector; Negotiation and post-trading services.

reports concerning possible restrictions and distortions of competition flowing from existing or envisaged laws. As in previous years, a wide range of different economic sectors were involved.

Advocacy reports by sector

Sector	**(number of interventions)**
	2009
Water	2
Insurance and retirement funds	3
Credit	2
Electricity and gas	4
Pharmaceuticals	4
Financial services	1
Oil products	3
Postal services	1
Professional and entrepreneurial activities	6
Advertising services	1
Waste disposal	2
Restaurant	1
Other services	13
Telecommunications	5
Transport and vehicle rentals	14
Radio and television	1
Total	**63**

Agriculture and manufacturing activities

PRICE LISTS FOR PASTA

In February 2009, the Authority concluded an investigation, pursuant to article 101 of the FTEU, establishing the existence of an anticompetitive agreement by the main pasta manufacturers and their industry Association Unipi. The manufacturers involved in the agreement represented the majority of the national market for pasta (approximately 90%) and Unipi was the most representative industry association.

The agreement was reached through meetings at the industry association where price increases were discussed and agreed upon. Once the increases to be charged to retailers were set, each company, based on those figures and its own market positioning and cost structure, decided its own pricing policies.

In the Antitrust Authority's view, the plentiful documentation gathered during the course of the investigation showed that the companies colluded on a concerted strategy of price increases. This allowed smaller companies with higher production costs (because of reduced economies of scale) to increase their prices: the retail chains, faced with generalized increases, were forced to accept the new prices. For their part, the larger companies, not wanting to be the only ones to raise prices, avoided the risk of losing significant market share.

The agreement affected the market in terms of average price increases to supermarket chains and prices applied by the retail trade to consumers. Specifically, as a consequence of the agreement, the price of pasta paid by retailers underwent an average increase of 51.8%; most of this increase was passed on to consumers, given that the retail price grew over the same period by 36%.

In view of the gravity and duration of the infringements, the Authority imposed total fines for 12,495,333 euros. In determining the base amount of the fines, the Authority, while considering the difficult economic situation of the pasta industry and the exceptional increases in the cost of its main input (wheat), did not accept the view that these elements could justify any collusion by competitors in the market.

Pharmaceutical products

LEGISLATIVE PROVISIONS ON MEDICINES FOR HUMAN USE AND REORGANIZATION OF THE PHARMACEUTICALS SECTOR

In June 2009, the Authority submitted a report to the Parliament, the Government and the Ministries of Labor, Health and Social Policy on the possible restrictive effects on competition of the "*Legislative provisions on medicines for human use and reorganization of the pharmaceuticals sector*".

These provisions regarded the retail distribution of medicines, which should be reserved exclusively to pharmacies, with the exception of a short list of non-prescription drugs, whose sale could be allowed also elsewhere and without requesting a pharmacist's presence.

In particular, the law prohibited sale of over-the-counter drugs and self-medication medicines in the so called *para-pharmacies* (shops authorized to sell a limited range of medicines under predefined conditions). The existing *para-pharmacies* would continue their activities for a maximum of 10 years from the adoption of the law. The Italian Pharmaceutical Agency would have subsequently provided a list of self-medications that could also be sold in shops other than pharmacies and for whose sale the presence of a pharmacist would not be required.

The previous legislative interventions for liberalizing the retail sales and prices of non-prescription pharmaceuticals were viewed with favor by the Authority. The liberalization resulted in a significant opening to competition of the market concerned: 2,500 new sales points, ranging from *para-pharmacies* to authorized *corner counters* in supermarkets, substantive reductions (up to 30-35%) of non-prescriptions pharmaceuticals prices sold in department stores and a positive pressure for discounting on pharmacies themselves.

In consideration of this situation, the Authority identified in the proposed legislation a reversal of the trend towards liberalization in pharmaceutical sector. Restoring exclusive distribution rights to pharmacies for the non-prescriptions pharmaceuticals would threaten the survival of para-pharmacies in the same market, causing their disappearance in 10 years time and nullifying the effects of investments in this sector.

Oil products

LIBERALIZATION OF ACCESS TO THE NETWORK OF FUEL DISTRIBUTION

In February 2009, the Authority submitted a report to the Parliament, the Government, the Regions and autonomous Provinces regarding the enforcement by Regions and Provinces of the provisions on the liberalization of access to the network for distribution of motor vehicle fuel.

The liberalization law provided for access to the market concerned upon the issuing of an authorization not subordinated to the closure of existing stations, number limitations, mandatory minimum distances between pumps and minimum areas designated for commercial activities. In incorporating the national law, several Regions (Piedmont, Lombardy, Sicily, Friuli Venezia Giulia and Emilia Romagna) inserted the provision that new service stations should be authorized only if equipped with LPG/methane gas distribution systems.

The Authority stressed that such requirement would have significantly increased the costs incurred by new entrants and would, therefore, reduce the number of potential newcomers to the market. Furthermore, since this provision was not to be applied to existing operators, it would have caused a serious disparity of treatment to the detriment of new entrants, and would re-create the very barriers to entry removed by the liberalization law.

The Authority suggested to the Regions and autonomous Provinces to adopt the liberalization provisions without adding any asymmetric requirements for new entrants and to favor the diffusion of eco-compatible fuels without recourse to discriminatory practices.

Electricity and natural gas

EXERGIA/ENEL

In December 2009, pursuant to article 102 of the TFEU, the Authority concluded a proceeding involving Enel Spa, the ex-monopolist in the electricity sector. The investigation was launched after Exergia filed a report complaining of delays, errors and omissions by Enel-controlled companies while transferring the customer-related, technical and fiscal data that Exergia required to operate in the market of the

retail sale of electric power to non-residential customers. Having accepted the commitments presented by the companies under Article 14-*ter*, paragraph 1, of Law no. 287/1990, the investigation ended without establishing an infringement.

Proceedings were launched in October 2008 to investigate a possible abuse of dominant position affecting competition in the retail sale of electric power to non-residential customers. In particular, ENEL Servizio Elettrico and ENEL Distribuzione hold a monopoly on the essential information required by new entrants (traders) in order to operate in the market. The Authority was concerned that Enel could deteriorate the quality of the information in order to undermine the *traders'* competitive capacity thus restricting competition in the retail electric power markets for non-residential sales. Incomplete or erroneous information would in fact have a particularly strong impact on incoming operators, which are critically dependent on the quality of the data received in order to start their activity.

The commitments allowed the investigation to come to a conclusion without establishing any violations or penalties, having eliminated the competition-related concerns that triggered the procedure. The instrument proposed by ENEL Distribuzione, provided new operators with a method for controlling, in advance, the quality of personal data provided by operators from the ENEL group (including ENEL Energia), thus preventing any deterioration of the information.

The Authority considered the binding measures sufficient to eliminate the competitive restrictions deriving from the provision of incomplete, erroneous or delayed data thus re-establishing competition in the retail electric power market for non-residential customers.

NATURAL GAS

MARKET FOR GAS STORAGE FACILITIES

In May 2009 the Authority concluded an investigation conducted jointly with the energy regulator, into the natural gas storage activities in Italy. The enquiry was aimed at verifying how competition in the sale of natural gas was affected by its availability and by the systems of making use of such resource.

During the investigation the Authority ascertained that gas storage represents the most effective and immediate mean to ensure to firms the necessary flexibility in order to comply with end user supply contracts and that, in general terms, the imposition of storage rationing on gas-providing firms, in particular those with industrial and/or power plant customers, represents a critical nexus for the development of competition in the sector.

The storage activity, even if not characterized by a natural monopoly status, is nevertheless a de facto monopoly, since 97% of this activity is controlled by the ex-monopolist Eni and its group subsidiaries.

From the beginning of gas sector liberalization up until now, no new storage areas have been established. The storage capacity increase is due to the limited upgrading of existing fields. The evidence gathered during the proceeding indicated how this scarse development is a result of deficiencies and delays due to the compliance with law provisions in case of increase in storage capacity.

The Authority made several recommendations in order to overcome the problems emerged from the investigation. First of all, the analysis confirmed that the evolution of the regulation on balancing services and the development of an organized market platform for gas trading would have a positive impact on the promotion of competition in downstream markets and on the development of the national gas market. Finally, the Authority stressed the need to modify the current rules and regulations on mineral storage which, from a quantitative point of view, benefit chiefly Eni, as the firm in a dominant position.

TRANSPORT AND VEHICLE RENTALS

RULES RENTAL WITH DRIVER SERVICES (DRAFT LAW FOR THE CONVERSION INTO LAW, WITH MODIFICATIONS, OF DECREE LAW NO. 2 OF 30 DECEMBER)

In February 2009, the Authority submitted a report to the Parliament and the Government on regulations regarding car rentals with drivers. These specific regulations modified the law no. 21/92 "*Legal framework for passenger transport via non-scheduled public auto services*", by imposing stricter criteria on the issuing of permits for the exercise of rental-with-driver activities. They also introduced new requirements for certain operators who run such services, namely the holders of rental-with-driver business licenses issued in Municipalities other than the ones where the service is actually being provided.

The Authority noted that the proposed modifications would oblige such drivers to use stations and garages in the Municipality that issued the permit, to park and stand inside prescribed areas only, to return to said stations/garages prior to accepting new customers, to record the time and route of each service provision on a service form. It also included the infliction of significant fines, including license revocation, in case of failure to comply with the new regulation. Additional limits were set by the new competencies conferred by law to municipal authorities, which could require operators licensed by other Municipalities to acquire a prior authorization for accessing their municipal territory and specified areas within it, and even the payment of a toll for every single service provided.

The Authority considered that such restrictions were designed only to harm license holders issued in other Municipalities. They seemed neither functional nor proportionate to effective Municipal traffic monitoring requirements with respect to limited traffic zones. If applied, such regulations would create a form of territorial compartmentalization that would severely limit the number of operators present in any given Municipality, thereby reducing the supply of non-scheduled public transport services to the detriment of the users.

COMMUNICATIONS

SOCCER LEAGUE/CHIEVO VERONA

In December 2009, pursuant to article 101 of the TFEU, the Authority concluded a proceeding regarding the Soccer League, establishing the existence of a competition-restricting agreement in the market for television broadcasting rights of Italian soccer events. The proceeding was prompted in order to verify whether the Soccer League set up a form of coordination of commercial activities for the selling of television rights of Serie B (i.e., the second division of the soccer league) so as to limit the options of potential purchasers to a single package of audiovisual rights for the entire 2007-2008 B Series Championship.

During the proceeding, the Authority ascertained that, in the course of the League meetings, the soccer *clubs* had opted to entrust the Soccer League of the collective sales of television rights for the Championship events.

Furthermore, the soccer *clubs* were to restrain from selling the rights for their domestic matches, even if they were the sole holders of the related rights. Despite the difficulties encountered by the Soccer League during collective negotiations and the operators' continued interest in marketing single events, the collective agreement was kept throughout the Championship taken into exam. The Soccer League also intervened towards the *clubs* in order to ensure the agreement's effective implementation by resisting any initiatives to stray away from the collective position.

The Authority considered the agreement as being liable to restrict competition by limiting (as the effect of a collective decision) the negotiating autonomy of individual businesses that would otherwise have competed with one another to sell their rights. The centralized form of negotiation was designed to present the market with a single comprehensive offer that covered all Championship matches, regardless of the fact that the broadcasters themselves expressed a highly disaggregated demand.

The agreement for single *clubs* to refrain from selling their rights independently was intended to prevent *pay per view* broadcasting from establishing a foothold as an innovative distribution method for Championship soccer matches. The Authority also determined that the agreement had prevented broadcasting operators from purchasing rights to the 2007-2008 B Series Championship matches, thus severely limiting live

television broadcasting of the matches to the detriment of broadcasters and consumers alike.

Having considered the seriousness and duration of the established violation, the Authority inflicted administrative fines of about EUR 102,000 on the National League of Professionals.

SECTOR INQUIRY INTO THE DISTRIBUTION OF NEWSPAPERS AND PERIODICALS

In September 2009, the Authority concluded the second part of a sectoral enquiry on the distribution of newspapers and periodicals, focusing on the legal framework and organization of the sector related to the ongoing technological changes and the distribution of new types of publishing products.

The market study was meant to review existing regulatory provisions and operating procedures of the sector in order to verify whether unjustified restrictions on competition were put in place.

The operational procedures for publishing distribution are guided by the principle of equal treatment, which requires distribution companies to provide equivalent service to all newspapers that request it. Also the sales points must ensure equivalent treatment to all newspapers. The *ratio* behind this principle lies in the legislator's will to ensure equal access by publishers to the distribution system, and hence to the readers themselves.

The investigation focused on the analysis of the current operating rules for the distribution of newspapers and periodicals. The goal was to identify potential adjustments that might enhance competition while maintaining informational pluralism.

Pursuant to the study's findings, the Authority identified the need for a comprehensive reform of operational procedures in the distribution sector due to the gradual sedimentation of principles, rules and agreements that were established under vastly different circumstances. According to the Authority, any outdated restrictions that fail to protect pluralism should be removed as perpetuating unjustifiably advantageous positions while hindering any effective response to the current dynamic changes in the sector.

The Authority reiterated its previously expressed auspices for a full liberalization of market access with respect to retail sales, a development that would encourage adaptation of the distribution systems to the ongoing evolution of demand. Presently, as revealed by the investigation, the regulation by city planners of outlet localization and permit procedures severely reduces competitive dynamics.

FINANCIAL AND MONETARY INTERMEDIATION

CENTRAL INSTITUTE FOR ITALIAN INDUSTRIAL COOPERATIVE BANKS/SI HOLDING

In March 2009, the Authority concluded an investigatory proceeding that authorized, subject to conditions, a concentration whereby SI Holding took over the Istituto Centrale delle Banche Popolari Italiane (ICBPI).

The proceeding uncovered the fact that the concentration in question would have created a dominant position in the national markets for *issuing* and *acquiring* services, as well as potentially restrictive effects on competition in the market for computer *processing* services, having considered the range of services offered, the vertical structure and the ties (in terms of shares, personnel and contracts) with the main upstream provider of IT services necessary for the entire supply chain.

In the markets for *issuing* and *acquiring* services in particular, the transaction in question would have created a single operator with an extremely high market share competing with a fringe of small players. Because the other licensed players in the circuits are able to offer the services in question only to their affiliated or group-related companies, the new operator would have been the only *de facto* supplier of the aforementioned services to other non-affiliated customers. Furthermore, since the *issuing* and *acquiring* activities also require a *processing* service, the dominant position acquired via the transaction in the markets for the *issuing* and *acquiring* services would have had anti-competitive effects in the market for processing services as well.

Subsequent to ICBPI's presentation of commitments, in March 2009 the Authority decided to authorize the concentration subject to several remedy measures. First of all, the Authority ordered ICBPI to provide clear and transparent offers for all *processing* activities, including separate and distinct indications of prices, terms and conditions and

quality levels for each individual service being offered by ICBPI, thus ensuring customers the possibility to select competing suppliers for each of services. The Authority also ordered ICBPI to offer clear and transparent economic terms and conditions to its own customers when buying *issuing* and *acquiring* services directly from ICBPI, and to cease making the POS management services offer conditional on the purchase of the entire service package. In addition, the Authority asked ICBPI to apply non-discriminatory conditions to customers who were not shareholders in ICBPI, its subsidiaries or its controlled companies, and to select its own IT *processor* through open, transparent and non-discriminatory procedures. Lastly, the Authority asked ICBPI to transfer its entire holdings in SIA-SSB to one or more independent third parties (that are non-shareholders of ICBPI) within a pre-established time-period. It was also asked to adopt a governing board resolution (to apply to other companies in the group as well) to the effect that newly appointed members of management and/or administrative and/or controlling bodies could no longer simultaneously hold similar positions within any companies in Italy that were competitors in the payment card sector and not members of the ICBPI group itself.

REGULATORY INTERVENTIONS IN THE GOVERNANCE OF BANKS AND INSURANCE COMPANIES

In January 2009, the Authority submitted a report to the Parliament, the Government, the Ministry for Economy and Finance, the Governor of Central Bank, and the President of CONSOB, the stock exchange regulator, containing several instructions that were designed to ensure that various legislative measures adopted in a short-term perspective, inspired by the objective of financial stability and early recover from the financial crisis, would be incorporated in medium- and long-term plan to create competitive market conditions.

While the government enacted anti-crisis decrees to set up several instruments to inject public funding in the banks in the context of an emergency, it missed - the Authority observed – to put in place mechanisms designed to change the *governance* of banks and insurance companies and the ways in which financial services are offered, which also seem necessary for achieving the long-term objective of restoring trust in the market fundamentals.

With respect to *governance*-related aspects, the Authority has found that interlocking directorates and ties between competitors, both shareholder and personal level, can create significant distortions in competition and, especially in those instances where those who invest (often shareholders in multiple competing banks) and those who receive the financing are the same entities, these distortions can have very serious effects for the stability and reputation of the entire system, thus generating the potential for dangerous domino effects, especially in the context of the ongoing crisis.

The Authority has pointed to banking institutions as playing the most essential role in guaranteeing stability and liquidity as many banks' most influential shareholders.

In recognition of this role, the Authority has encouraged greater transparency of the criteria used for asset management, the voting criteria employed by shareholders and the selection criteria for proposing candidates for the governing boards of shareholder groups.

On the specific issue of cooperative banks, the Authority has reminded that the outcome of its market study revealed how the structure and the features of the Italian banking system had become outdated and were no longer justifiable. The Authority, therefore, continues to encourage the removal of all regulatory elements that, lacking objective justification, hinder a greater efficiency in the composition of shareholdings and in company governance. As for the cooperative banks of the circuit Banche di Credito Cooperativo (BCC), the Authority noted their increasing regional and nationwide interconnections at both federative and associative levels, with a shift from intra-bank competition to an inter-bank competition - yet another phenomenon in need of regulatory adjustment to the new reality manifested in these banking institutes.

With respect to interventions regarding the supply side of the financial services, the Authority has seen favorably the major legislative amendments that were made in the rules and regulations governing real estate loans and overdraft limit fees, but it has stressed the importance of preventing these sets of rules from becoming too difficult to understand, because this would inhibit ready comparison of the different options on the market so that the interested parties can knowingly choose the most competitive one.

PROFESSIONAL SERVICES

REFORM IN THE LEGAL PROFESSION

In September 2009, the Authority presented a report raising several objections concerning the anti-competitive nature of various provisions contained in the proposal for reform of the legal profession.

In particular, the Authority identified some provisions included in the proposal as likely to produce harmful restrictions to market functioning and to cause unduly burdens to consumers and firms not justified by the pursuit of public interest objectives.

The Authority addressed in the first place a new set of *reserved activities*, whose number was increased by the proposed reform. As observed by the Authority, if the granting of exclusive rights could be justified by the peculiar kind of services provided (i.e., the representation of, assistance with and defense of legal verdicts), then the same justification was not applicable to all the other kinds of activities which the proposal of reform envisaged to exclude from the free access regime. In the second place the Authority turned its attention to the *new measures regarding the access to the profession*, since new restrictions and limitations were being introduced to professional training.

With reference to *fees*, the Authority regarded what provided by article 12 of the draft law as a possible cause of inelasticity in the economic behavior of the parties. the draft article 12 proposed the introduction of fixed and minimum fees which, in any case, was already eliminated by a previous law (Decree no. 223/2006). The Authority underlined that minimum and fixed fees can, in no way, guarantee the quality of the services provided, while causing serious restrictions to competition by preventing members of the bar from engaging in independent economic behavior. The Authority deemed that this rigidity was not justified by the pursuit of a common good, since its main purpose was to shelter lawyers from price competition.

As for the general rules on *advertising* on the part of lawyers, the Authority pointed out that the use of a word like "information" in place of "advertising" was in fact a misleading and restrictive practice, since it fails to convey the sense that each professional may use advertising as a commercial tool for promoting his/her own business. As a consequence, the provisions contained in the proposed reform would

have caused severe restrictions to competition by preventing the use of comparative advertising.

SECTOR INQUIRY IN PROFESSIONAL SERVICES

In January 2009, a sector inquiry on various professional activities (architects, lawyers, labor consultants, pharmacists, geologists, surveyors, journalists, engineers, doctors and dentists, notaries, industrial inspectors, psychologists, accountants) was concluded. The inquiry was meant to verify how the competition principles were incorporated in the different codes of conduct of the 13 professions involved.

The sector inquiry followed the entry into force of the so-called 'Bersani reform' (decree no. 223/2006) on professional services, a reform which sanctioned the removal of fixed and minimum fees, the possibility of advertising and using multi-disciplinary companies to organize professional activities. This reform allowed professional orders and colleges to adapt their respective codes of conduct to the new provisions included in the cited decree and explicitly repealed regulatory and legislative provisions that may prevent liberalization.

From the study it emerged that most of the boards in charge for control of the code of conduct, though with some exceptions, were resisting the introduction of competition principles and liberalization foreseen by the Bersani reform. After a fruitful consultation with the Authority, several of these orders changed their codes of conduct including a competition-oriented setting of professional fees. However, other orders resisted to the reform since their members were anchored to a particular recognition of professional "decorum" in setting its own fees, in the sense that such decorum requires professionals to impose minimum fees.

Even today, the codes of conduct of several orders still provide for the application of fixed and minimum fees for the remuneration of professional services.

Some of the codes of conduct under examination included fairly restrictive provisions regarding advertising, another sign of the strong resistance to *antitrust* principles. Some orders prevent their members from advertising their fees or from using certain methods for the distribution of advertising. Several professional categories also retained control powers over the authorization to advertising, while the Bersani reform only provide for an ex-post assessment of the impact of liberalization on advertising. In

other cases, the codes require that all advertising should be submmited, either during or after its actual distribution, to a code of conduct monitoring body.

In order to promote a wider liberalization of professional services, the Authority reaffirmed the need to facilitate the access to the different professions. According to the Authority, the legislator should institute, wherever possible, university courses that offer direct certification for the practice of specific professions. The training stage should also be proportionate to the practical learning needs of different professions, and wherever possible it should be offered in the context of the course of studies itself.

Finally, the Authority invited the legislator to intervene in order to eliminate any restrictions on professional activities put in place whenever they are not justifiable by the pursuit of a public interest objective or whenever there is no less restrictive way to achieve it.