AGCM
AUTORITÀ GARANTE DELLA CONCORRENZA E DEL MERCATO

ANNUAL REPORT

2010

COMPETITION ENFORCEMENT AND PROMOTION

1. Interventions by the Antitrust Authority: summary

In 2010, the application of anti-trust laws involved the examination of 502 mergers, 11 agreements, 13 alleged abuses of dominant position, 7 corporate separations and 7 cases of failure to comply with the obligation to provide advance notification of a merger.

	Non-violation of the law	Violation of the law, conditional authorisation, modification of agreements, acceptance of commitments	Outside the scope of the law	Total
Agreements	1	8	2	11
Abuses of dominant position	-	11	2	13
Concentrations/mergers of independent enterprises	478	-	24	502
Corporate separations	5	2		7
Failures to comply with the obligation to provide advance notice of mergers	7			7

Agreements

In 2010, eleven different investigatory proceedings regarding agreements were concluded.

In five of these cases, the proceedings confirmed violations of the prohibition on competition-restricting agreements, with four cases concerning violations of article 101 of the TFUE[1] and one case concerning a violation of Law no. 287/90, article 2[2]. A total of EUR 111,153,681.00 in fines was imposed in consideration of the seriousness of these violations.

In three cases[3], proceedings were concluded with the Authority accepting and making obligatory the commitments presented by one of the parties without the ascertainment of a violation[4].

[1] LPG HEATING PRICES IN THE REGION OF SARDINIA, RETAIL SALES OF COSMETIC PRODUCTS, NATIONAL COUNCIL OF GEOLOGISTS – CODE OF PROFESSIONAL PRACTICE, RESTRICTIONS ON CALCULATING REMUNERATION, CREDIT CARDS.

[2] TRANSCOOP - TRANSPORTATION SERVICE FOR THE DISABLED.

[3] TOLLING EDIPOWER, PAGOBANCOMAT INTERCHANGE FEES, INTERBANK "RIBA-RID-BANCOMAT" AGREEMENTS.

Investigative proceedings concluded in 2010 regarding agreements (grouped by primary sector of interest)

Credit	3
Chemicals, plastics, rubber	1
Electricity and gas	2
Pharmaceutical	1
Professional and entrepreneurial activities	1
Transport and vehicle rental	1
Total	**9**

As of 31 December 2010, twelve proceedings were pending, eight of them pursuant to TFEU article 101[5] and four pursuant to article 2 of Law no. 287/90[6].

Abuses of dominant position

In 2010, the Authority concluded thirteen alleged proceedings regarding abuses of dominant position.

In one case, the conduct was held to be in violation of TFEU article 102[7] and a fine of 2,165,787.00 EUR was imposed. In the other ten cases[8], proceedings were concluded with the Authority accepting obligatory commitments presented by the interested parties without the ascertainment of a violation[9].

[4] In another case (PIEDMONT REGIONAL HEALTH AUTHORITY - FLU VACCINE TENDER), no evidence for a restriction of competition was found, while in the last two cases (ANICA - GUIDELINES FOR DIGITAL CINEMA DEVELOPMENT, ENERGY MANAGEMENT SERVICE - VENETO HOSPITAL FACILITIES) proceedings were terminated due to inadmissibility or non-applicability of the law.

[5] BITUMEN PRICE INCREASES, INSURANCE TENDERS FOR CAMPANIA REGIONAL HEALTH AUTHORITIES AND HOSPITAL FIRMS, INTERNATIONAL LOGISTICS, MARITIME SERVICES AGENCIES, PAPER WASTE MANAGEMENT - COMIECO, FEDERITALIA/ITALIAN FEDERATION OF EQUESTRIAN SPORTS (FISE), AGREEMENT IN THE ROAD BARRIERS MARKET, HEALTHCARE TENDERS FOR MAGNETIC RESONANCE EQUIPMENT.

[6] HEATING SYSTEM MAINTENANCE IN THE MUNICIPALITY OF POTENZA, REPOWER ITALIA/ELECTRICITY BALANCING AND DISTRIBUTION IN THE CENTRE-SOUTH, 2009-10 RATES AND REMUNERATION GUIDE FOR ADVERTISERS, BRESCIA ORDER OF LAWYERS.

[7] PLASTERBOARD MARKET.

[8] CONTO TV/SKY ITALIA, SORGENIA/A2A, SORGENIA/ACEA, SORGENIA/ITALGAS, SORGENIA/HERA, SORGENIA/IRIDE, T-LINK/GRANDI NAVI VELOCI, SELECTION PROCEDURES NATIONAL LEAGUE OF PROFESSIONALS 2010-11 AND 2011-12 CHAMPIONSHIPS, ENEL - PRICE FORMATION DYNAMICS, ELECTRICITY MARKET IN SICILY, FIEG - FEDERAZIONE ITALIANA EDITORI GIORNALI (ITALIAN FEDERATION OF NEWSPAPER PUBLISHERS)/GOOGLE.

[9] In two other cases (AEROPORTI DI ROMA [ROME AIRPORTS] - AIRPORT FEES, SEA/AIRPORT FEES), the Authority proceeded with the closure of an investigation that had been reopened by a TAR Lazio sentence. In March 2010, in fact, the State Council reformulated the TAR pronouncement by reviving the Authority's original measures in full.

Investigative proceedings concluded in 2010 regarding abuses (grouped by primary sector of interest)

Electricity and gas	6
Television rights	1
Non-metallic minerals	1
Transport and vehicle rental	3
Advertising services	1
Radio and television	1
Total	**13**

Fourteen proceedings pursuant to TFEU article 102 were under way as of 31 December 2010[10].

Mergers examined

With respect to mergers, 502 cases were examined for the period in question. In 478 cases the Authority authorized the mergers without further investigation and another 23 cases were closed due to non-applicability of the law. The Authority conducted one investigation pursuant to article 16 of Law no. 287/90, making authorisation for the operation conditional on the companies' modification of previously-imposed corrective measures[11]. The Authority also conducted seven investigations concerning the failure to communicate the obligatory advance notice of a merger operation[12]. These cases involved violations of article 19, paragraph 2 of Law no. 287/90, with total fines amounting to 210,000 EUR. Two proceedings were still under way as of 31 December 2010 – one for failure to comply with a warning notice/merger denial[13] and the other concerning authorisation for a merger[14].

[10] VARIOUS MUNICIPALITIES - EXECUTION OF TENDERS FOR GAS DISTRIBUTION CONTRACTS, MUNICIPALITY OF PRATO - ESTRA RETI GAS, SKY ITALIA/AUDITEL, E POLIS/AUDIPRESS, TELECOM ITALIA - TENDERS FOR LAND-LINE PHONE SERVICE AND IP CONNECTIVITY, WIND - FASTWEB/TELECOM ITALIA LINES, RTI/SKY - SOCCER WORLD CUP, TNT POST ITALIA/POSTE ITALIANE, SAPEC AFRO/BAYER-HELM, RATIOPHARM/PFIZER, ARENAWAYS - OBSTACLES TO MARKET ACCESS FOR RAILWAY PASSENGER SERVICES, FEDERITALIA/ITALIAN FEDERATION OF EQUESTRIAN SPORTS (FISE), GIOCHI24/SISAL.

[11] BANCA INTESA/SANPAOLO IMI.

[12] TOSCANA ENERGIA/TOSCANA ENERGIA GREEN, ESSELUNGA/21 RETAIL OUTLETS (59 BUSINESS BRANCHES), BILLA/6 ESSELUNGA RETAIL OUTLETS, EUROSPIN LAZIO/15 BUSINESS BRANCHES, NEW MOTORS/BUSINESS BRANCH OF CANNELLA AUTO, T.T. HOLDING/T&M CAR, ALLIANCE HEALTHCARE ITALIA/FARMA & TEC.

[13] BANCA INTESA/SANPAOLO IMI.

[14] EDENRED ITALIA/RISTOCHEF.

Corporate separations

In 2010, the Authority examined seven cases of corporate separations pursuant to article 8, paragraph 2-*ter* of Law no. 287/90. In two of the cases the Authority ascertained a violation of

the advance notice obligation and imposed a total of 12,500 EUR in pecuniary sanctions[15]. The remaining cases concluded with a dismissal[16]. One proceeding of this category was pending as of 31 December 2010[17].

Competition advocacy

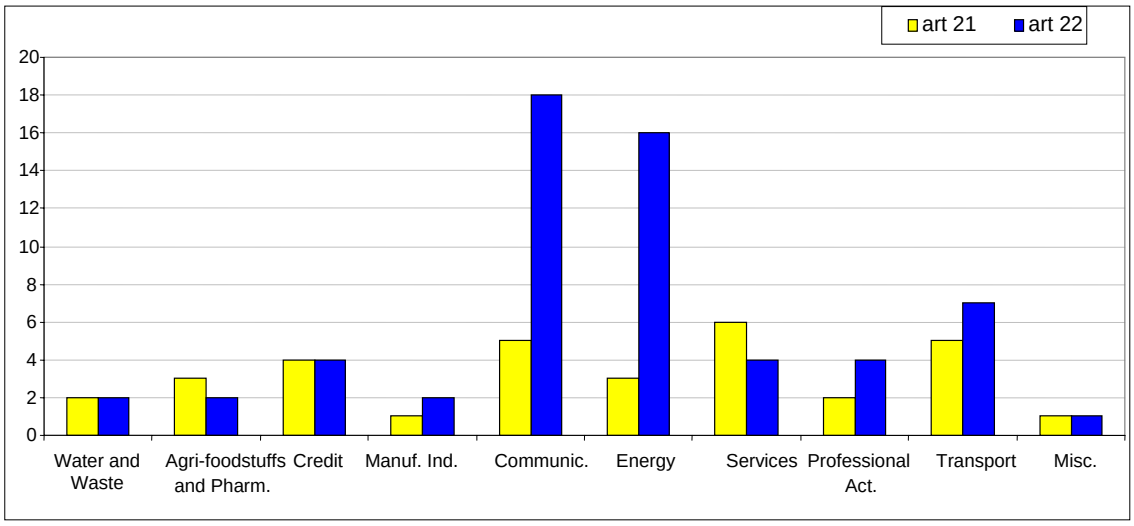
In 2010, pursuant to articles 21 and 22 of Law no. 287/90, the Authority published 92 reports and opinions about restrictions on competition as reflected in existing laws and/or upcoming legislation.

In particular, in 2010, the Authority expressed 60 opinions upon request of interested public administrations and entities or at its own initiative, pursuant to article 22 on legislative/regulatory initiatives and issues relating to competition and the market.

The Authority also issued 32 reports pursuant to article 21 with regard to legal or regulatory standards and general administrative measures that were deemed to cause distortions to competition.

As in previous years, the reports and opinions concerned a wide range of different economic sectors.

BREAKDOWN OF REPORTS BY LEGAL BASIS AND SECTOR OF INTERVENTION – 2010



Source: internal calculations.

[15] AGSM VERONA, MUNICIPALITY OF MILAN - ATM/ATM SERVIZI.

[16] EGEA-ENTE PER ENERGIA E L'AMBIENTE/VALBORMIDA ENERGIA, ACSM - AGAM/ACSM - AGAM RETI GAS-ACQUA, POSTE ITALIANE/POSTE VITA, FER - FERROVIE EMILIA ROMAGNA/TSF - TELE SISTEMI FERROVIARI, AZIENDA TRASPORTI MILANESI/ATM SERVIZI DIVERSIFICATI.

[17] FERROVIA ADRIATICO SANGRITRANA.

2. Institutional activities for protecting and promoting competition in various economic sectors

PHARMACEUTICAL PRODUCTS

RESTRICTIONS ON THE OPENING OF "PARAFARMACIE"

In August 2010, the Authority submitted a report to the Parliament and the Government with regard to competition-distorting effects deriving from a bill containing "*Rules on the opening of new parafarmacie*". These provisions called for a freeze on the opening of new parafarmacie (pharmacies authorised to sell only over-the-counter medicines) until the rules for selling pharmaceuticals had been redefined as well as a cap (based on demographic criteria) on the number of parafarmacie allowed to operate in each Municipality.

In line with previous reports, the Authority found the rules in question to represent a reversal of the trend toward liberalisation in the distribution of pharmaceuticals and to pose a serious threat to the market presence of parafarmacie and to their capacity to put genuine competitive pressure on pharmacies.

The Authority also noted how the rule in question unjustifiably reduced the competitive pressure exerted by the free development of this new distribution channel and appeared capable of seriously limiting the range of consumer choices with a negative impact on price levels and quality of service. In light of these insights, the Authority called for the legislation in question not to be approved.

MARKETING AUTHORISATION PROCEDURES FOR GENERIC DRUGS

In March 2010, the Authority submitted a report to the Agenzia Italiana del Farmaco (Italian Medicines Agency) with regard to the procedures for issuing marketing authorisations for a major line of generic drugs. In particular, the Authority maintained that competition could suffer detrimental effects – as a result of delaying the entry of generic drugs into the market – if marketing authorisations for generic drugs are made conditional on the resolution of disputes concerning the presumed violations of industrial property laws by generic drug manufacturers, especially if the subject with responsibility for granting such authorisations lacks an explicit obligation of this nature.

On account of these circumstances, the Authority was in favour of evaluating marketing authorisation requests for generic drugs in a way that allows generic drug manufacturers to enter the competitive process in a timely manner.

PETROLEUM PRODUCTS

LPG HEATING PRICES IN THE REGION OF SARDINIA

In March 2010, the Authority concluded an investigative proceeding pursuant to TFEU article 101 for the case of ENI, Liquigas and Butan Gas with the ascertainment of a competition-restricting agreement in the markets for nationwide LPG distribution in cylinders and small tanks.

The proceeding was initiated in April 2008 after the Authority received several complaints from consumers about the high prices for LPG in cylinders for household use in the Region of Sardinia. In the preliminary assessment the Authority presupposed the existence of coordinated commercial strategies by businesses operating in the phase prior to bottling/wholesale distribution in the Sardinian market.

In October 2008, the Authority received a leniency request from Eni that suggested the existence of a secret cartel that was much larger in scope and magnitude than the agreement first suspected during the preliminary phase of the investigation. Butan Gas, Eni and Liquigas had put in place an agreement for the period 1994-2005 with effects that extended into 2006, with the objective of jointly setting list prices for LPG sold by quantity and in cylinders to the public across the entire nation.

On the basis of Eni's statements and other information that was acquired, the investigatory proceeding concluded with the Authority's ascertainment that these three firms had indeed set up a competition-restricting agreement – in violation of TFEU article 101 – lasting at least ten years. The objective of this agreement was the coordination of respective nationwide pricing policies for LPG in cylinders and small tanks, and this was achieved by means of regular and repeated contacts between representatives of the three corporations. The information acquired in the course of the proceeding also revealed a high degree of parallelism in the determination of list prices – when they were adjusted or left unchanged – in response (though not exclusively) to fluctuations in international prices for raw materials (FOB Bethouia).

The Authority's analysis, therefore, made it possible to confirm the declarations that Eni had made in its leniency, leading to the ascertainment of an agreement among the three main operators in this market.

In recognition of the information provided by Eni and its full and continuous collaboration, the Authority refrained from imposing sanctions on Eni. Taking into account the seriousness and duration of the violation that was ascertained, the Authority imposed administrative fines on the other two cartel members of 4,888,121 EUR for Butan Gas and 17,142,188 EUR for Liquigas.

In April 2010, the Authority increased the fine imposed on Butan Gas to 6,785,904 EUR after this firm announced that it had reported an incorrect value for nationwide LPG sales in cylinders and small tanks for 2005.

OTHER MANUFACTURING ACTIVITIES

RETAIL SALES OF COSMETIC PRODUCTS

In December 2010, the Authority concluded a proceeding pursuant to TFEU article 101 with the ascertainment that Henkel Italia Spa, Unilever Italia Holdings Srl, Reckitt-Benckiser Holdings (Italia) Srl, Colgate-Palmolive Spa, Procter & Gamble Srl, Sara Lee Household & Body Care Italy Spa, L'Oreal Italia Spa, Società Italo Britannica L.Manetti-H.Roberts & Co Spa, Beiersdorf Spa, Johnson&Johnson Spa, Mirato Spa, Paglieri Profumi Spa, Ludovico Martelli Srl, Weruska&Joel Srl, Glaxosmithkline Consumer Healthcare Spa, Sunstar Suisse SA corporations and the Associazione Italiana dell'Industria di Marca Centromarca had put in place a competition-restricting agreement involving a complex system for altering competition dynamics in the domestic sector for cosmetic products marketed through the large-scale retail channel.

The proceeding was initiated in June 2008 after Henkel presented a simplified verbal request for admission to the leniency programme, which later was also joined by Colgate-Palmolive Spa and Procter & Gamble.

The information that was gathered led the Authority to ascertain that the objective of the agreement between the producers of cosmetic products distributed through the *retail* channel was to align list prices for cosmetic products and other commercial strategies practised in relation to the large-scale retail channel in order to maintain a "stable market situation". The findings in fact confirmed that the companies involved exchanged sensitive information on the main competitive variables and coordinated their commercial strategies, most notably during the "Chemical Group" meetings of the Associazione Nazionale dell'Industria di Marca-Centromarca. The coordination of commercial strategies assumed particularly explicit form in 2005, when producers counteracted Esselunga's (a large retail distributor) aggressive tactics by drawing up and promoting, with Centromarca, coordinated actions designed to repel the threat posed by these commercial practices to the stability of their coordination.

The Authority judged that the series of practices by the main companies in the sector formed part of a concerted, complex and continuous agreement that lasted from 2000 to 2007, which was liable to constitute a serious violation of competition designed to completely alter competitive interaction in the sector of cosmetics sold through the large-scale *retail* channel. In view of the seriousness and duration of the violations ascertained, the Authority imposed a total of 81 million EUR in fines on these corporations.

THE PLASTERBOARD MARKET

In June 2010 the Authority concluded an investigatory proceeding pursuant to TFEU article 102 regarding the case of Saint-Gobain Ppc Italia Spa (formerly Bpb Italia Spa), ascertaining an abuse of dominant position in the market for plasterboard production and sales. The investigation was prompted when Fassa Spa, a competitor, complained about various exclusionary practices that were being used by Saint Gobain Ppc to prevent, or at least obstruct and delay, Fassa from entering this market.

During the investigatory proceeding, the Authority confirmed that Bpb had put in place a complex, multi-faceted strategy designed to prevent, or at least severely obstruct and delay, Fassa's market entry (as a new operator) by hindering its access to raw plaster supplies in sufficient quantities and qualities to compete with Bpb in plasterboard production. More specifically, it emerged that Fassa planned to open a plasterboard factory in a geographical location were it would pose a tangible threat to Bpb as a new competitor. To prevent this from occurring, Bpb engaged in a complex strategy involving, in equal measure, both the acquisition of strategic plaster reserves, i.e. interest in them in order to increase their market value and deny the new competitor access to critical reserves, and the establishment of a series of legal proceedings through third parties. Additional elements of abusive conduct consisted in Bpb's intense, continuous monitoring of its competitor's activities and strategic property acquisitions intended to cut off Fassa's plaster supply.

As a consequence of Bpb's abusive conduct, Fassa, its competitor, bore significant increases in the costs of market entry, which in addition was delayed by at least 3 years.

The Authority deemed that the complex global strategy put in place by Bpb constituted an abuse of dominant position designed to exclude Fassa from the market. The Authority considered that the ascertained violation, the duration of which was quantified as five and a half years, was exacerbated by the further damage that was caused to competitive dynamics in a market already characterised by entry barriers. The fact that Fassa was considered to be an eligible new *player* was also taken into account, as its entry would have fostered and improved competition. Of further relevance, was the possibility that the abuse also functioned to a certain degree to deter potential competitors by discouraging other future entrants.

In view of the seriousness and duration of the violation and considering Bpb's own initiatives to attenuate the consequences of its conduct, the Authority imposed administrative fines of 2,165,787 EUR on the company.

ELECTRICITY AND NATURAL GAS

ENEL-PRICE FORMATION DYNAMICS IN THE SICILIAN MARKET FOR ELECTRICITY

In December 2010 the Authority concluded, by accepting commitments, an investigatory proceeding that had investigated ENEL Spa and ENEL Produzione Spa ("EP") to ascertain possible violations of TFEU article 102 in the wholesale electricity market in Sicily. The procedure was initiated in January 2010 after the Italian Regulatory Authority for Electricity and Gas delivered a report on its fact-finding investigation into the price dynamics for electricity in Sicily in late 2008 early 2009. The Regulator's analysis emphasised how narrow supply margins were in Sicily in the quarter that was examined and identified several cases of economic and physical capacity withholding by ENEL and Edipower, two of Sicily's main operators. The Regulator also highlighted the possible coordination of Edipower tolling strategies.

The Regulator's analysis also seemed to suggest the existence of a high correlation between peaks in prices for the Sicily zone during the period in question and episodes of capacity withholding by EP.

Following the results of the survey, the Authority opened an investigation into an alleged abuse of dominant position based on the consideration that capacity withholding constitutes a form of supply restriction to the detriment of consumers and that the observed capacity withholding could be part of a general EP strategy to keep the Sicily zone prices at artificially high levels.

In June 2010 ENEL and EP proposed commitments that consisted in fixing a *bid cap* on electricity from generating units located in Sicily. The bid cap, for 2012-2013, was to be indexed to the Brent price of petroleum and could be recast to account for expected variations in the cost of environmental liabilities.

The Authority found the proposed commitments adequate to significantly restrict ENEL's capacity to use capacity withholding to exercise its market power, and in December 2010 ruled to accept EP's and ENEL's commitments and close the proceeding without the ascertainment of a violation.

SORGENIA/A2A, SORGENIAACEA, SORGENIA/ITALGAS, SORGENIA/HERA, SORGENIA/IRIDE

In September and October 2010, the Authority concluded five proceedings pursuant to TFEU article 102 by accepting and making obligatory commitments proposed by six vertically-integrated companies (A2A, Acea, Italgas, Hera and Iride) operating in electricity and gas sales and distribution. Each company had been the subject of a separate investigation into possible abuses of dominant position in different local markets following complaints by Sorgenia, an operator not vertically integrated, which claimed that the distribution companies were using inefficient

procedures and obstructive behaviour to raise competitors' costs in entering the retail markets for gas and electricity.

In particular, the complainant argued that the distributors were raising obstacles to its entry in the relevant markets, by making switching difficult for costumers (for example delaying the release of data). The effect of the conduct was to hinder the competitor's entry into the newly liberalized market. A preliminary ascertainment by the Authority confirmed the existence of objective discriminations against sellers that were not integrated with the local distributor.

The parties offered commitments that anticipated the evolution of the regulatory framework in the sector of electricity and gas, which is at the moment under revision, aimed at easing switching by consumers. The Authority deemed the commitments sufficient to eliminate the concerns that had arisen regarding competition. These commitments, therefore, were made obligatory for all parties and the investigation was closed with no violation ascertained.

MEASURES FOR INCREASING COMPETITIVENESS IN THE NATURAL GAS MARKET AND THE TRANSFER OF RESULTING BENEFITS TO FINAL CUSTOMERS

In May 2010 the Authority submitted several observations to the Government and the Parliament concerning the draft legislative decree containing "*Measures for increasing competitiveness in the natural gas market and the transfer of resulting benefits to final customers, pursuant to article 30, paragraphs 6 and 7 of Law no. 99 of 23 July 2009*".

The Authority, though expressing appreciation with the objectives of the measures, aimed at increasing stocking capacity for natural gas, pointed out various general issues in need of improvement. In particular, the draft decree was characterised by an excessive number of deferrals to future regulatory interventions, heightening the *ex ante* uncertainties that the market and institutional subjects would have to sustain. The Authority, therefore, asked to revise the decree so that it specified the largest possible number of assumptions and predictions from the outset.

With regard to the specific content of the draft measures, the Authority highlighted that the thresholds in terms of "wholesale market share", beyond which companies were bound to comply with the obligations set out in the decree, should be calculated transparently and based on unquestionable and *ex ante* knowable data. The Authority also suggested the introduction of an absolute incompatibility between the role of a party obliged to develop new storage capacity and the role of agent representing investor parties for the use of the new capacity.

Lastly, the Authority called for a clearer definition of the powers to impose penalties entrusted to it by the decree so that it might be an effective deterrent in cases of partial, incomplete or complete failure to fulfil the obligations set out in the programme approved by the Minister for Economic Development.

RULES AND REGULATIONS ON THE GENERATION OF ELECTRICITY FROM RENEWABLE ENERGY SOURCES AND RULES ON THE CONSTRUCTION AND OPERATION OF RELATED PLANTS

In April 2010 the Authority submitted several observations to the Parliament and the Government with regard to the rules on electricity generation from renewable energy sources, with a special focus on the authorisation process for the construction and operation of related plants.

First of all, the Authority recalled how the legislator had already made provisions, in 2003, for the adoption of specific guidelines to define the principles for a unified authorisation process and for the proper integration of wind-powered plants into the landscape. While waiting for the national regulations to be approved, the Regions passed their own independent legislation to create significantly different regulatory environments, especially with respect to the requisite conditions for operating in the sector.

With respect to the draft Guidelines that the relevant Ministries subjected to a process of public consultation in the first months of 2010, the Authority, while expressing an essentially positive assessment of the document with a view to promoting competition in the sector, nonetheless identified a number of residual guidelines that were formulated in an excessively generic manner and were in need of greater clarification.

With regard to the possible setting of fees for performing the unified authorisation process, the draft Guidelines asked the Regions to base their fees on actual expenses, but without providing any explicit specification of the entity, procedures or calculation methods employed. In this respect, the Authority was in favour of incorporating a maximum ceiling for the fees, which would be defined as a percentage of estimated annual production or installed capacity as opposed to a fixed amount. The Authority also proposed that these fees should reflect the costs actually sustained by the administration responsible and that they should be accessible to the proposing party *ex ante* in order to make market access conditions transparent and stimulate competition between different prospective locations.

In response to the request for security deposits as guarantees for the future decommissioning of plants, the draft Guidelines called for such deposits to be determined on the basis of objective parameters relating to the actual cost of operations to restore the site to its original condition, or of reintegration and environmental recovery of the site concerned. On this note the Authority highlighted the opportunity, in the concrete assessment of restoration works, of providing for the involvement of suitably qualified, independent third parties to ensure that security deposits are set appropriately, and to prevent, also in this regard, distortion in market access conditions between the various local players.

Lastly, with regard to the setting of compensatory measures in favour of interested Municipalities, the draft Guidelines, despite providing general principles for determining them, did not specify any amount as a ceiling. With regard to this matter, the Authority noted how this circumstance might well encourage

(unwarranted) subsidisation of local bodies, which could easily lead to discrimination against operators from different geographical contexts, thus thwarting the goal of creating a level playing field in terms of equal opportunities with regard to means of accessing the sector.

The final version of the Guidelines, adopted in July 2010 during the joint State/Regions Conference, took on board the Authority's observations in their entirety.

TRANSPORT AND VEHICLE RENTAL

PROVISIONS FOR ROAD TRANSPORT

In July 2010 the Authority submitted several observations to the Presidents of the Senate and the Chamber, the Prime Minister and the Minister for Infrastructure and Transport concerning a proposed amendment to existing laws in the road transport sector (as per article 83-*bis*, Decree Law no. 112/2008).

In particular, the Authority found that the plan to introduce voluntary sector agreements among carrier associations designed to specify "minimum operating costs," which would be implemented as the setting of minimum fees, would represent a tool for protecting the income levels of carriers instead of ensuring service safety and quality standards, which should be already guaranteed by the powers entrusted to relevant public administrations to monitor and impose penalties. Also questionable was the notion that the "minimum operating costs" would be defined by the legislator if the voluntary agreements should fail to be finalised within nine months of the new provision's entry into effect.

The Authority, therefore, affirmed that the need to guarantee compliance with safety parameters provided for by law can in any case be satisfied through measures that are more consistent with the principles of competition.

T-LINK / GRANDI NAVI VELOCI

In May 2010 the Authority concluded an investigatory proceeding pursuant to TFEU article 102 for the case of Grandi Navi Veloci Spa (GNV) by accepting its commitments and closing the investigation without the ascertainment of a violation. The proceeding was first prompted by a complaint filed by the T-Link corporation, which claimed that GNV had put in place practices intended to exclude the competing operator from the maritime transport market for freight and passenger lines. These practices included: *i*) offering higher than usual discounts to road transport companies that expressed any interest in services being provided by the new entrant; *ii*) increasing freight transport capacity for the sole purpose of boycotting the new entrant; *iii*) the application of predatory pricing; *iv*) threats of commercial retaliation against road transport companies that continued to show an

interest in T-Link's services in spite of GNV's counterproposals; *v*) denigrating and disruptive activities to the detriment of T-Link.

During the course of the proceeding, GNV presented a set of commitments that the Authority deemed adequate for eliminating its competition-related concerns. Taken as a whole, these were designed to anchor GNV's commercial policy to objective parameters and eliminate the possibility of selective discounts designed to exclude competitors, all within a context characterised by sufficiently transparent information provided to the Authority for it to be able to implement effective monitoring of the commitments.

RULES FOR RENTALS WITH DRIVER

In April 2010 the Authority submitted several observations to the Presidents of the Senate and the Chamber and the Prime Minister with regard to the regulations governing rentals with drivers as contained in Decree Law no. 5 of 10 February 2009 ("*Emergency measures in support of industrial sectors in crisis*"), converted into Law no. 33 of 09 April 2009. The Authority noted how these regulations introduced more stringent criteria for granting authorisations to carry on this type of activity as well as new requirements for the operators, especially the holders of licences issued by a different Municipality from the one in which the service is provided.

The regulations in question, more specifically, required the carrier's base and garage to be located within the boundaries of the Municipality that actually issued their permit. It also required operators to park inside their garage and to fill out a service order for each individual service (specifying the time and route), providing for significant penalties for failure to comply with the new rules, up to and including being struck off the register. Additional restrictions stemmed from the fact that Municipalities could require the holders of licences from other Municipalities to apply for prior authorisation and pay a toll for each individual service performed within municipal boundaries or in limited traffic zones.

The Authority found that a provision of this nature, which restricts rental with driver services to the Municipality that granted authorisation, could produce geographical compartmentalisations that would significantly limit the number of operators in the market, thereby reducing the supply side for non-scheduled public transportation services to the detriment of consumers. The Authority, therefore, called for the elimination of the administrative restrictions that were introduced.

TELEVISION RIGHTS, PUBLISHING AND ADVERTISING SERVICES

FIEG- GOOGLE

In December 2010 the Authority concluded an investigation pursuant to TFEU article 102 into Google Italy's behaviour, after a complaint filed by the Italian Federation of Newspaper Publishers (FIEG) arguing that Google was abusing its dominant position by using the publishers' on line content in order to strengthen its position in the online advertising market.

In particular, FIEG complained that Google was denying publishers control over which of their articles could be published by Google News Italia, a service that tracks, indexes and displays news contents published by a number of on-line Italian publishers.

In the course of the proceeding, the Authority ascertained that the methods used to determine the payouts for website publishers as Online affiliates of the AdSense program were not clear, detailed or verifiable enough to provide meaningful feedback on important aspects of the publishers' business and commercial activities.

Google offered commitments overcoming the competition-related concerns that triggered the procedure, allowing the ICA to close the investigation not establishing a violation. Google enabled publishers to control the use of their content on Google News and, with AdSense, released the shares of gross revenues given to publishers.

The Authority found the package of commitments proposed by Google to be sufficient to remove any competition concerns.

Besides, the Authority, aware that some of the issues raised in the complaint concerned the regulatory framework for the use of digital content, also submitted a report to Government and Parliament requesting a review of copyright laws in light of web-based technological and economic innovations.

CONTO TV- SKY ITALIA

In July 2010 the Authority concluded an investigatory proceeding pursuant to TFEU article 102 with regard to Sky Italia Srl by accepting its commitments and closing the investigation without ascertaining a violation. The proceeding was prompted by a complaint filed by Conto TV, a television broadcaster, concerning several exclusionary practices by Sky Italia, the dominant player in Italy's pay-TV market, in the access to its satellite platform.

During the preliminary assessment the Authority found that the economic conditions imposed by Sky on Conto TV for *wholesale* services for satellite platform access, wherever its discriminatory nature might be confirmed, were likely to constitute an abuse of an exclusionary nature designed to limit the development of competition in the Italian *pay-TV* market.

In order to eliminate the competitive concerns that had been identified, Sky presented a series of commitments including: *i)* provision of regular accounting details concerning the economic terms and conditions applied to Sky's operational

division for access to the satellite platform; *ii)* obligations to notify broadcasters of their rights to access during contract negotiations; *iii)* establishment of a standard procedure for handling platform access requests; *iv)* preparation of periodic compliance reports with regard to commitment *iii)*. Following *market testing*, Sky then presented several additional modifications to these commitments, extending the period for which the proposed commitments would apply and publishing the notifications regarding platform access in a section on Sky's *website*.

The Authority deemed that Sky's proposed commitments were sufficient to remove the anti-competitive concerns on the provision of services for satellite platform access.

DAILY, PERIODICAL AND MULTI-MEDIA PUBLISHING

In January 2010 the Authority submitted several observations to the Parliament and the Government concerning the regulation of the daily, periodical and multi-media publishing sector. The Authority's intervention was prompted by technological developments and their impact on the publishing sector that called for a reform of the relevant legal framework in order to remove competition-related restrictions. The Authority observed that although Law no. 62/2001 had already updated the concept of 'published product', yet that in such a radically changed context prompt intervention by the Legislator was essential in order to comprehensively revise criteria relating to public subsidies to the publishing industry, in order to redefine potentially beneficiary parties and the allocation of resources among them.

The Authority's observations focused, in particular, to possible distorsivi effects of public subsidies for the publishing sector, both in the form of direct economic subsidies in favour of specific publishing enterprises, and indirect, generalised forms of economic aid, such as reduction of fees, tax breaks and favourable credit terms.

The Authority highlighted that the criteria to grant the funds require meticulous scrutiny to prevent them from being channelled into initiatives that make no real contributions to publishing or that are not in need of internal support. The Authority also suggested that the criteria used to calculate contributions, which are currently based on costs sustained and print runs, should be more market oriented. It was also deemed necessary to review the duration of the subsidies so that they will also be able to offer economic support for enterprises during their start-up phase.

With respect to indirect contributions, the current provisions on subsidised postage rates for the subscription delivery of published products identify Poste Italiane as the only subject qualified to receive such benefits, and provides for the magnitude of the contributions to be proportional to the number of issues mailed. For these reasons, the Authority emphasised the need to eliminate the first provision and proposed a cap on the amount of postage compensations that can be disbursed to a single publishing group.

Secondly, with regard to the rules governing the operation of the distribution system, the Authority observed how the regulation of retail locations on the basis of

municipal planning and licensing procedures is detrimental to competition dynamics. The Authority, therefore, called for an intervention to liberalise access to the market. Furthermore, the Authority suggested intervening in the economic relations between different links in the supply chain itself in order to heighten efficiency and, in particular, to make it possible to pay retailers differently on the basis of objective parameters that take into account quality of service and the results achieved by the enterprise.

In conclusion, the Authority was in favour of a comprehensive reform in the publishing sector in order to foster competitive dynamics while providing safeguards for pluralism of information.

FINANCIAL AND MONETARY INTERMEDIATION

CREDIT CARDS

In November 2010 the Authority concluded an investigatory proceeding pursuant to TFEU article 101 regarding the Mastercard network and eight banks (Banca Monte dei Paschi di Siena, BNL, Banca Sella Holding, Barclays, Deutsche Bank, Intesa Sanpaolo, ICBPI and Unicredit) licensees of the MasterCard brand and active in the *acquiring* market in Italy. The investigation conducted by the Authority identified two types of anti-competitive practices.

First, MasterCard's coordinated setting of a specific *Multilateral Interchange Fee* (MIF) for credit card transactions in Italy was classified as a competition-restricting agreement equivalent to the setting of a joint and uniform minimum threshold for one of the price components for the corresponding payment service in the absence of reasonable economic justifications.

In addition, a set of vertical agreements was ascertained, represented by a collection of licence contracts between the network and individual licensees that made it possible to pass the first agreement's restrictive effects on to the retail markets. This type of contract was in fact used to pass MIFs on to *merchant fees*: individual licensees set (knowing the MIFs) the operator commission structures as part of their commercial policy and apply specific rules (*'honour all cards' rule*) and additional conditions in their contracts with shopkeepers (such as opting not to differentiate between on-us and circulatory transactions, *blending* and the so-called *'non-discrimination rule*'). This band of vertical agreements was deemed to be competition restricting insofar as its aim was not merely to pass the MIF on to the *merchant fee*, but also involved the adoption of specific clauses with merchants in accordance with the mutual interest of both licensing-contract parties to push the brand with the highest MIF in the absence of any competitive comparisons between networks and banks.

After the commitments proposed by the interested parties were rejected as being insufficient to resolve the competition-related issues noted in the proceedings and in

accordance with the seriousness of the ascertained violation, the Authority imposed over 6 million EUR of fines on the companies involved.

PAGOBANCOMAT INTERCHANGE FEES

In October 2010 the Authority concluded an investigatory proceeding pursuant to TFEU article 101 regarding the BANCOMAT Consortium by accepting the party's proposed commitments and closing the investigation without the ascertainment of a violation.

In the preliminary assessment the Authority observed that the agreement to set the interchange fee could affect the provision of payment services to final users. The Authority, therefore, found that the interbank agreement related to the PagoBANCOMAT service and the underlying interchange fee could constitute an agreement that was capable of undermining competition.

In April 2010 the PagoBancomat Consortium proposed commitments that were intended to dispel the competitive concerns that had been raised in the preliminary assessment. The Consortium undertook specifically to *i)* lower the MIF, in accordance with economic efficiency and cost orientation, by more than 4% of the value of the average charge; *ii)* incorporate any efficiencies that characterised the system into the next cost review and not to raise the interchange fee above the resulting value; *iii)* ensure that the PagoBANCOMAT contract with operators exclusively governs procedures for contracting the PagoBANCOMAT service only; *iv)* publicise the new rules of operation and the value of the interchange fee as reduced by the proposed commitments; *v)* evaluate the principles drawn up at the European level concerning new methods for establishing interchange fees and undertaking to redefine the amount of the fee within the subsequent 6 months.

The Authority made a positive assessment of the proposed reduction in the interchange fee and its immediate implementation. In addition, the Consortium undertook to evaluate EU studies on the *tourist test* (the so-called merchant indifference methodology) and to recalculate the interchange fee accordingly. The Authority also made a positive assessment of the Consortium's commitment to publicise the newly reduced interchange fee so that consumers and operators could make more informed decisions about methods of payment. While reserving the right to verify the continued capacity of these commitments to eliminate competitive concerns in light of possible changes in competitive conditions and the European context, the Authority resolved to make these commitments obligatory and to close the proceeding without the ascertainment of a violation.

INTERBANK "RIBA-RID-BANCOMAT" AGREEMENTS

In September 2010 the Authority concluded an investigatory proceeding pursuant to TFEU article 101 regarding ABI, the Italian Bankers Association, and the BANCOMAT Consortium by accepting the commitments proposed by the parties

and closing the investigation without the ascertainment of a violation. The proceeding was initiated by the Authority in order to ascertain whether the centralised, uniform definition of the multilateral interchange fees for RiBa, RID and BANCOMAT services involved agreements that affected services provided at the interbank level and the provision of payment services to final users, making it susceptible to distorting competition in the common market.

In April 2010, ABI and the BANCOMAT Consortium proposed commitments that were designed to eliminate the competitive concerns highlighted by the Authority.

With respect to the RiBa services and BANCOMAT withdrawal services, ABI and the Consortium undertook to reduce their respective fees, to conduct cost reviews that covered any efficiencies in the value of these interbank commissions, leave these values unchanged and publicise the new values.

With regard to the RID service, ABI undertook to reformulate the RID direct debit service into two components (the payment service and the electronic archives alignment service) in order to lower the commission and redefine the size of the RID Veloce interchange fee. In addition to the usual obligations regarding publicity, ABI undertook to conduct a cost review for these services without raising the fees, "except in response to actual or legal modifications occurring over the medium term as part of expected developments in the SEPA context."

The Authority found the proposed commitments to be sufficient to reduce the competitive concerns raised during the preliminary assessment for the proceeding. Specifically, the Authority made a positive assessment of the recalculation of the two RiBas and the interchange fee for ATM withdrawals on the basis of a system-level criterion of economic efficiency, which would result in the lowering of these values. The Authority also found the separation of the RID service MIF into two components to be consistent, in principle, with the current structure of the service in question, underlining how both are calculated on the basis of the costs sustained by the most efficient banks offering the RID service. These values, therefore, are set to decrease as a reflection of system-level efficiencies, with the MIF component even dropping to zero for payment services by the end of October 2012, in addition to remaining ineligible for increases in any case.

Given these considerations the Authority – while reserving the right to verify the lasting capacity of these commitments to eliminate competitive concerns in view of changes in competitive conditions and in the European context – ruled to make these commitments obligatory and to close the proceeding without the ascertainment of a violation.

PROFESSIONAL AND ENTREPRENEURIAL ACTIVITIES

NATIONAL COUNCIL OF GEOLOGISTS – CODE OF PROFESSIONAL PRACTICE RESTRICTIONS ON CALCULATING REMUNERATION

In June 2010 the Authority concluded an investigatory proceeding pursuant to TFEU article 101 regarding the National Council of Geologists by ascertaining a competition-restricting agreement involving price restrictions specified in its code of professional practice. The investigation was prompted by the January 2009 conclusion of the second fact-finding investigation into the sector of professional services (IC34), which found non-compatibility between the professional codes of conduct of several professional orders, including that of geologists, and the principles of competition.

During the proceedings the Authority ascertained that in spite of the reforms introduced by Decree Law no. 223/2006, which provided for the abolition of, among other things, obligatory fixed or minimum professional fees, and despite the major *advocacy* campaign conducted by the Authority during the course of the fact-finding investigation, the aforementioned code of professional practice still continued to require geologists to apply fixed professional fees for the determination of their professional compensation. This included calculating their compensation in reference to a general "decorum" clause and to article 2233, paragraph 2 of the Civil Code, which calls for decorum in establishing remuneration.

During the course of the investigation, the National Council of Geologists failed to provide any justification for the abovementioned price restrictions and instead responded that the Professional Order of Geologists is a public institution that is not subject to *antitrust* law. The council proposed commitments involving modest changes to the code of professional practice being addressed by the proceeding.

After rejecting these commitments as inadequate to remove such anti-competitive aspects, in June 2010 the Authority ascertained a violation of TFEU article. 101 by the National Council of Geologists, which through the abovementioned professional standards had set prices for the professional services offered by geologists. In proportion to the ascertained violation, the Authority imposed a 14,254 EUR fine on the National Council of Geologists.

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