

Conferenza sui recenti sviluppi nell'applicazione dell'art. 82 – 6 marzo 2009

Introduzione del Presidente Catricalà

Ladies and gentlemen,

It's my pleasure to welcome you to this conference.

The current economic climate has hit the foundations of our discipline.

But I think that we are all convinced of the value of antitrust rules as a driver of the economic recovery and of the growth that will follow. For this reason it is appropriate, I would say necessary, that we are gathered here to discuss the abuse of dominant position in European competition law.

It's no coincidence that the Commission, last December, at the peak of the financial crisis, wanted to conclude the long review of the application of Article 82 on abusive exclusionary conducts. It seems that the Commission wants to underline that the crisis, while requiring extraordinary actions, must not overshadow our principles.

The Commission guidelines are very important, for two reasons. First, they indicate that the Commission will focus on exclusionary abuses. This is acceptable, insofar as the repression of abuses against buyers will be better achieved through the tools of consumer protection; these are gradually improving in the European Union, thanks also to the network of national authorities. Second: a good action against exclusionary abuses should create the competitive conditions sufficient to prevent firms from abusing consumers.

The Authority is bound to comply with the guidelines, given its duty to provide consistent application of Community law, and to refer to the relevant principles of its interpretation.

The approach in favour of consumers, of more competitive market conditions, and company efficiency has been followed for a long time by the Authority. We often use the tool of closing the investigation if companies commit themselves to adopt better practices. For this reason we continue to prosecute exploitative abuses, which we investigated in the past with good results, obtaining important commitments from the firms.

This matter of commitments introduces the topic to be discussed in the last session of the conference, namely the relationship between the implementation of the law on abuse of dominant position and regulation. The Authority and the Commission work mainly against abuses in industries where there is a pervasive regulation. The role of regulation and antitrust has been traditionally differentiated on the basis of the type of intervention: the former, *ex ante* and therefore preventive, with the aim of promoting competition; the latter, *ex post*, requiring slow procedures, with the aim of repressing infringements and protecting competition. Thanks to the tool of ‘commitments’, the separation between the two areas seems less. The Authority, by accepting the good proposals of the firms, takes actions aimed directly to remedy the alleged abuses. These actions also have an indirect effect of improving competition in the market. We understand that it is only a temporary effect, waiting for better regulation or a better market structure, but in closed markets we have to encourage a first move towards competition.

A final hint to another theme that will be debated today is the relationship between antitrust law, in particular on abuses, and use of intellectual property rights. This is an old point associated with finding a balance between exercising market power, essential in order to promote research and innovation, and protection of competition. Since there is no universal formula, the economic approach of the new guidelines will be very useful to distinguish particular cases in which market power use is acceptable.

The Authority will give its contribution to strengthen the new guidelines, cooperating with the Commission and the other national authorities. Thanks very much for your attention.

Welcome to our Authority.

I hope you have a successful conference.