

AGCM

ITALIAN COMPETITION AUTHORITY

Annual Report

Introduction by the President,
Giovanni Pitruzzella

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Madam Speaker of the Chamber of Deputies, Authorities, Ladies
and Gentlemen

1. The growth of antitrust enforcement

In 2016, the enforcement of competition law and consumer protection again grew in strength. Fines amounting to 306 million euro were issued in the course of the year (marking a further increase with respect to previous years).

Antitrust proceedings in 2016 and the early months of this year numbered 13 for anticompetitive agreements, nine for abuse of various kinds and 73 for control of concentrations. 2016 also saw 145 proceedings involving consumer protection. Twenty-six preliminary investigations for antitrust issues and 65 for consumer protection issues are currently under way.

In the Authority's proceedings, including in observance of Italian national case law and that of the European Court of Human Rights, a particular focus is placed on the protection of the right to defence, including through a marked distinction between, on the one hand, the activity carried out by its offices to investigate and contest unlawful conduct and, on the other, the decision-making activity that is the preserve of the Board. A significant indicator of this distinction is the increase in antitrust decisions establishing an infringement or the acceptance of commitments. From 2012 to the first four months of 2017, these accounted for 14% of all proceedings, compared with 4% in the previous seven years.

The Authority's fact-finding investigations continued in 2016. These concerned important markets and made it possible to identify the main factors obstructing the full development of competition in this sector. More specifically, five fact-finding investigations were conducted, regarding urban waste management, local public transport services, vaccines for human use, the dairy sector, and the audio-visual sector.

Our advocacy work to promote competition was particularly intensive. In the course of 2016 and early 2017 the Authority adopted 105 reports regarding restrictions of competition arising from existing or draft legislative provisions. Twenty-three opinions

were adopted pursuant to Article 21-bis of Law No 287/1990 (introduced in 2011). The provisions currently in force provide that, if the administration to which the opinion is addressed does not comply with the Authority's recommendations, the Authority can impugn the act adversely affecting competition in the administrative courts. Another 18 opinions were adopted at the request of the Prime Minister's Office, regarding regional laws with features restricting competition.

The Authority monitors the outcomes of this reporting activity, which are satisfactory. In the period spanning 2015 and the first six months of 2016, 55% of a total of 147 cases were successful.

Lastly, the 38 decisions on conflicts of interest of government members, and the 2077 on the legality rating, are worthy of mention. The latter enjoyed great success with economic operators, and saw enquiries increase by 48% with respect to 2015.

The institutional framework for the protection of competition was strengthened recently by the adoption of Legislative Decree No 3 of 19 January 2017 transposing the European private enforcement directive (Directive 2014/104/EU on antitrust damages actions). The Authority cooperated actively, first at the European level in drafting the Directive, and then at the national level, in its implementation.

The new legislation strengthens the interaction between the work of the Authority and individual civil actions for compensation for antitrust damages. It recognises, inter alia, a specific evidentiary weight for decisions by the competition authorities, including in other Member States' legal systems. The consolidation of this framework will strengthen the deterrent effect of Antitrust decisions. In this light, it is hoped that the injured parties in antitrust offences (for example in bid-rigging cases and in the pharmaceutical sector), which also include public institutions, will gain a better understanding of the possibility of taking action for compensation of damages, which in some cases could be damages suffered by Treasury.

Again with a view to further strengthening the institutional framework for the protection of competition, the recent proposed European Directive (approved by the European Commission on 22 March 2017), on strengthening the role of the national competition authorities in applying Articles 101 and 102 of the TFEU, is worthy of mention. The Authority is taking an active part in drafting the Directive.

2. Markets under stress. Criticisms of globalisation and competition

Markets and competition are subject to increasingly strong criticism. Globalisation and the opening of the markets have been essential pillars in the global order that has characterised the political-economic cycle of the last 30 years. But today these pillars, along with many other components of that order, have been brought radically into question.

The political success of economic nationalism, as witnessed to dramatic effect by the American presidential election, is nothing other than the climax of a longer-standing historical process, during which an increasingly marked dissatisfaction with global markets has gradually emerged. First we had the financial crises of 1997-98 (Asian, South American and Russian), then the failure of the Seattle World Trade Organisation summit of 3 December 1999, when the Black Bloc made one of its first appearances. And then came the "great crisis" that erupted in 2007, which began as a private finance crisis, was transmitted to the real economy and, in Europe, to sovereign debt, and then translated into a major recession, accompanied by strong protests against the actors of the global market initiated by movements like Occupy Wall Street.

Against this background, after decades of unstoppable growth, global trade was brought to a halt, marking a backwards move in globalisation. The most significant indicator of this trend is the relationship between global exports and world GDP. This reached a peak of about 30% in 2007-08, indicating that just under a third of the world's production was then traded at the international level. In recent years this trend has reversed. Exports are growing more slowly than production, with the result that the world seems, as some commentators have observed, to have entered a phase of "deglobalisation". The failure of the negotiations that should have led to the Transatlantic Trade and Investment Partnership (TTIP) provides more clear evidence of this.

Even that grand project which in Europe, especially after the Single European Act, led to the establishment of an internal market without legal barriers between Member States, based on the free movement of people, capital, goods and services, has lost some of its impetus. This is not just the effect of Brexit and the underlying reaction against the free movement of European workers. It is also the result of the difficulties which the attempts to consolidate economic integration have encountered. This means that while Europe has succeeded in liberalising markets once dominated by public monopolists, it is struggling to integrate its national markets into a single European one.

This situation is common to highly important economic sectors such as the electricity and gas, telecommunications, digital commerce, services, rail transport and audio-visual sectors, to name just the most visible examples.

In the domestic context, too, reactions against the opening of the markets are by no means absent. We need only think, in the case of Italy, of the complex parliamentary process involved in the “annual” competition bill, which it seems will soon be approved for the first time, albeit weakened with respect to its initial form.

And we can also consider the protectionist reactions of taxi-drivers to the competitive force exerted by platforms like Uber; the attempts to impose regulatory constraints on the expansion of the sharing economy; the criticism from several fronts, some of them highly authoritative, of the liberalisation of trade and of regional legislative initiatives to oppose it; or of the opposition to the implementation of the “Bolkestein” directive on the liberalisation of services. Not to mention those liberalisation initiatives left half-finished. Like that of the electricity market, where most domestic users (68%) have remained under the enhanced protection scheme.

Of course, as the OECD data show, in recent decades Italy has experienced a constant process of market opening, generally in implementation of European directives and the prompting of the competition Authority. However, the Goods Market Efficiency Index recently produced by the World Economic Forum in its comparative international analyses of competitiveness, sees Italy still lagging behind the other major European countries.

How should we interpret these phenomena, and what are their repercussions on the role of the Competition Authority and on competition policy more generally?

3. The virtues of competitive markets: economic growth, innovation, lower prices

Globalisation and the opening of the markets have for decades been one of the main factors in economic growth.

Competition stimulates renewal and fosters productivity and economic growth. Competition spurs efficiency and a reduction of costs, and leads to lower prices. The reduction of prices in the sectors most open to competition is clear: we need only mention the emblematic case of telecommunications (especially mobile). Lower prices are not just advantageous to consumers. Reducing the cost of fundamental inputs strengthens the competitiveness of the enterprises using those inputs in their production processes.

Conversely, a high degree of market power in upstream businesses constrains the productivity of businesses downstream and penalises manufacturers in particular. Moreover, competition, including from abroad, forces those managers who would otherwise prefer “a quiet life” to embark on the innovation road (Hicks). And innovation is the main driver of economic growth.

Today, after the long recession the engine of growth seems to be revving up again. The recent edition (17 April 2017) of the World Economic Outlook produced by the International Monetary Fund (IMF) told us that the world’s economy is growing again. The estimates speak of expected global growth of 3.5% in 2017 and 3.6% in 2018. Moreover, they show that the trend towards growth is widespread at the global level, with many of the factors that had been a cause for concern in recent years in clear regression.

Growth is set to continue in the United States (2.3% in 2017 and 2.5% in 2018), making companies more confident that demand will increase and boosting stock levels. In the United Kingdom too, the outlook for growth looks strong, at 2% – Brexit notwithstanding. And the Chinese economy, which is advancing at a significant pace (6.6%), is driving global growth by increasing the demand for and prices of commodities, which benefits the developing countries that export them.

The rise in commodities prices, with the resulting rise in overall price levels, is helping reduce deflationary pressures. Growth has resumed in Japan, thanks to exports (1.2%), while Russia has emerged from recession and shows prospects for growth. The forecasts for the euro area are good too, with average projected growth of 1.7% in 2017. Some economies look set to exceed this (Spain, with 2.6%), while signs are finally emerging of a real recovery in the slower economies, including France, at 1.4%, and Italy, with 0.8%.

After years of regression, global trade is also growing again (3.8% in 2017 and 3.9% in 2018). Italy seems well placed to benefit from this trend, given that its manufacturing industry is in second place after Germany in terms of Europe’s exporting industries.

These trends notwithstanding, there are serious threats at the global level in the form of structural problems, most notably low productivity growth and high levels of inequality in income distribution, with the resulting social malaise fuelling the drive for protectionism.

4. Growing inequality and its political and economic consequences.

Economic growth, which rode the wave of globalisation, the opening of the markets and technological innovation, has left in its wake a dramatic increase in inequality. While total wealth has increased throughout the world, the income gap between the very rich and the very poor has widened considerably in the advanced economies.

Today, the richest 10% of the population in OECD countries earns about 9 times more than the poorest decile of the population. In many countries, the income of the poorest decile grew slowly in the "fat" years, only to fall during the lean years of the crisis. The increase in inequality is highlighted by the Gini index, which measures countries' inequality levels. In the OECD countries, in the mid-1980s the Gini coefficient was 0.29; now, according to the latest surveys, it stands at 0.32. This increase in inequality has affected at least 16 of the OECD countries, including Italy.

The transfer of production processes abroad is often cited as the reason for this trend. The IMF Outlook underlines, however, that many jobs requiring average skill levels have been lost in the advanced economies as a result not so much of offshoring as of the technological innovation we have seen since the 1990s.

The increase in inequality is not just a threat to social cohesion. According to the OECD and the IMF, it also affects economic growth because it impoverishes human capital and reduces domestic demand.

The justified concerns over social equity are fuelling protectionist policies. External protectionism acts in combination with internal protectionism, which sees the State once more become a central economic actor and thus claim the right to decide, in place of the market, on the optimal allocation and distribution of resources.

In a period characterised by uncertainty we are witnessing, just about everywhere in the West, a "return to Hobbes". If the Leviathan rose up in response to a need for security, it is natural that part of society should once again turn to the state to find a solution to the current existential uncertainties. The troubled balance between sovereignty and the markets is shifting in favour of the former, and the sword is occupying spaces previously entrusted to the invisible hand.

Economists, and many international organisations, have warned us of the serious risks inherent to these trends. They observe that a return to protectionist policies – especially in a trade war scenario – would translate into increased costs for many basic inputs for domestic industry and higher prices for consumer goods. This is especially true for goods consumed by the weakest segments of the population.

And without the pressure of international competition, the drive to innovation and productivity growth would run out of steam. Any weakening of competition in national markets would, in turn, amplify these effects by increasing monopolist “rents”, reducing consumer choice, increasing the prices of many goods, discouraging innovation, and favouring crony capitalism. Economic growth and general well-being would thus be threatened.

But it is unlikely that people who right now are unemployed or run the risk of losing their jobs, or who are part of an impoverished middle class, agree with these systemic and long-term assessments.

5. A market that’s closer to people. The consequences for the role of the Competition Authority

Given the scenario that I have quickly sketched out, the idea that capitalist market economies need to undergo some major corrective adjustments in order to make growth more inclusive and respond to the need for true social equity is gaining ground.

In this light, some commentators, such as Eleanor M. Fox of New York University, have identified a need that is expressed concisely in the title of her recent essay: Making markets work for the people. On this side of the Atlantic, Nobel prize winner Jean Tirole has proposed an *Economie du bien commun*. In Europe, there is a well established cultural tradition that recognises the vital role of competition in satisfying human needs and its ability to keep the economy out of political hands and thus ensure freedom.

Starting from these assumptions, this tradition has come to believe that – as Luigi Einaudi observed, in relation to the work of Wilhelm Röpke – there is a need to take action on the concrete ways in which “historic” capitalism operates to ensure that everyone starts off on the same footing. Such actions are viewed as being not in conflict with, but rather consistent with, maintaining a market economy based on competition.

Today, the possibility of capturing the effects of, and consolidating, the global recovery is closely linked to the ability to introduce this type of change in market economies.

All of this affects the Competition Authority directly. An important school of thought sees robust antitrust enforcement as one of the instruments that can be used to reduce inequality (E.M. Fox, J.B. Baker and S.C Salop). Antitrust intervention – which historically came into being to protect outsiders – reduces the scope for guaranteed “rent”, which equates to an appropriation of resources

by those who enjoy market power while removing them from other groups. When market power goes unopposed, the result is an increase in the producer's surplus, which increases the wealth of shareholders and senior managers, i.e. those who are at the higher levels of income distribution.

Thomas Piketty's thesis, according to which capitalist economies tend, in the long term, to increase inequality when the return on capital exceeds the rate of growth, also connects market power with inequality. In addition, by discouraging innovation and increased productivity, market power ends up slowing down growth and, by reducing the amount of resources to be redistributed, leads by this route too to increased inequality.

6. New developments in antitrust action: abuse of dominant position through excessive prices

In this new cultural and political climate, innovative forms of antitrust action are taking shape. One notable example, in the Italian Authority's recent enforcement activity, is the rediscovery of a form of abuse – abuse through excessive prices – which, although envisaged by European competition law, seemed to have been forgotten in antitrust practice.

This form of abuse does not appear in American law and often meets with opposition in Europe too, given that it is difficult to establish when a price is excessive, and that many observers feel that market dynamics themselves should trigger processes to restore the balance. As the Supreme Court judge, Antonin Scalia, said, the existence of excessive prices, at least in the short term, should not be a cause for concern because the markets will tend to self-adjust through the entry of new enterprises attracted by the high prices, while there will eventually be a fall in demand.

The weak point in this position is that the markets are not always able to self-correct, especially when, through circumstances or for legal reasons, the dominant company enjoys a privileged market position that makes it unlikely that new enterprises will enter that market (T. Ackermann). Nor is a corrective adjustment on the demand side always possible. For example, if someone needs a "life-saving" drug, the only limit to their willingness to pay is their economic ability to do so. In such cases excessive prices worsen inequality and are particularly objectionable from the perspective of social equity.

It was precisely with regard to "life-saving" drugs that the Competition Authority issued a fine (in September 2016) for abuse through excessive prices by, according to our reconstruction, Aspen, a South African multinational. The case in question involved a group of anti-cancer drugs used primarily by children and the elderly,

known as “Cosmos drugs”. After acquiring the rights to market these drugs from their original owner (GlaxoSmithKline), Aspen opened aggressive negotiations with the Italian Medicines Agency (Italian initials AIFA) with a view to obtaining a steep increase in the price. They threatened, if their demands were not met, to apply to have the drugs reclassified as class C. This would have meant that – for the first time ever for an anti-cancer drug – the Cosmos drugs could not have been reimbursed by the Italian National Health Service (Italian initials SSN).

The negotiations concluded in January 2014 with Aspen’s demand essentially being met. This led to price increases of, depending on the product, between 300% and 1500%. Such increases were utterly unjustified (considering that Aspen had not incurred any research costs and did not produce the Cosmos drugs directly, having merely bought this particular “portfolio” of products to enter the European market). This gave rise to prices that were totally unrelated to any measurement of the production costs incurred to produce the drugs. In the Authority’s view, the excessive disproportion between costs and prices, and the very specific context in which Aspen was acting, constituted “exploitative abuse”, for which it fined the company.

This case confirms the focus that the Authority has placed on the pharmaceutical sector for some years now (with decisions that have attracted a great deal of attention at the international level). It is important to point out, however, that regardless of the conduct sanctioned by the Authority, the pharmaceutical industry makes a very significant contribution not just to Italy’s GDP but also to the protection of the health of its citizens. In this knowledge, we have begun cooperating more closely with the AIFA. This has led to our signing a collaboration protocol (19 January 2017) and to a closer and more profitable dialogue with Farmindustria (the association of pharmaceutical companies), with the common goal of disseminating a culture of compliance with competition law.

Abuse through excessive prices also featured in another recent case which concerned the electricity market incumbent and was opened after a report from the Regulatory Authority for Electricity Gas and Water (Italian initials AEEGSI). The AEEGSI pointed out that the high costs incurred by Terna in 2016 for dispatching services, and so the high economic burden borne by consumers (domestic and business), possibly stemmed from abusive conduct by the dominant operator in its supply offering for its production plant in Brindisi.

In early May 2017 the Authority accepted the commitments submitted by Enel, which will prevent any repetition of unjustified energy costs for the coming years. More specifically, Enel undertook to ensure that, for each of the years 2017, 2018 and 2019, the

annual revenue from the Brindisi plant (net of allowed variable costs) will not exceed a level that is much lower than the amount that the current criteria for the quantification of the plant's costs would have produced. This will generate savings of over 500 million euro for consumers over the three years.

It is important here to underscore the European dimension of Italian decisions on excessive prices. Shortly after the Aspen case the Spanish Comisión Nacional de los Mercados y la Competencia opened a similar investigation, again into Aspen. In addition, the United Kingdom's Competition and Markets Authority issued a fine for excessive and unfair prices in the sale of an anti-epilepsy drug and opened a proceeding against Actavis in another case of excessively high pricing in relation to huge increases in the prices of certain drugs (so a similar case to the Italian one). Once again, the interaction between the various competition authorities in Europe has been confirmed.

7. Combating bid rigging in public procurement

One of the Authority's priorities in recent years has been to combat bid rigging by cartels in public procurement tenders. By revitalising competition, combating bid rigging helps prevent rent-seeking and frees up resources which, rather than going to members of the cartel, remain in the public coffers and can be used to stimulate growth and/or reduce inequality.

These antitrust actions were again conducted in 2017 and, as always, were characterised by very close cooperation with the Anti-Corruption Authority (Italian initials ANAC). This collaboration has been very effective, not least as a result of the protocol of understanding that places the reciprocal cooperation by the two authorities on an institutional footing (which is also significant in legality rating terms). Equally significant in this area are relations with the ordinary courts, and in particular with the Public Prosecutor's office in Rome.

In February 2017 the Council of State confirmed the Authority's decision to fine a cartel bidding in the Consip (central purchasing body) tender for cleaning services in schools. The tender was subdivided into 13 lots worth about 1.63 billion euro overall. The collusion consisted of a distorted use of the consortium mechanism.

In formal terms, Consorzio Nazionale Servizi (National Services Consortium) and Manutencoop Facility Management, one of its members, took part independently. However they agreed, in accord with other parties in the procedure (notably, Roma Multiservizi, in which Manutencoop holds a significant share), on a strategy to

pursue agreed objectives and change the outcome of the procurement. In this, they also resorted to sub-contracting to protect their respective market positions. Through this agreement, the companies in question – two of which are the biggest operators in this market – in effect eliminated any mutual competition to share out the most appetising lots and win the maximum number envisaged by the tender.

In another Consip tender, the Authority recently (March 2017) opened an investigation into the Consorzio Nazionale Servizi and six other companies. Its aim here was to ascertain whether, including through companies controlled by the Consortium, they had entered into an agreement to restrict competition with a view to coordinating their participation in the tender for Facility Management services for buildings belonging to the public administration, universities and other research institutes (tender FM4).

Other investigations into possible cartels set up to take part in public tenders are currently on-going (for example, the investigation into the procurement exercise for forest fire-fighting and helicopter rescue services). In others, the Authority found that an offence had been committed and issued the appropriate fines. One such example is the case relating to home oxygen therapy and artificial ventilation therapy.

8. Protecting weak contractors from abuse of economic dependence and vigorously protecting consumers

Another innovation is the use of an instrument that once again seemed to have been forgotten: abuse of economic dependence. This instrument is gaining in importance – not just here in Italy but also in other countries, for example Germany and Spain, which also recognise this form of abuse – with the growth in the role of large-scale distribution, which can, essentially, impose its will on small suppliers.

The first opportunity to use this instrument – which gave rise to difficulties of interpretation and application that were by no means negligible – was provided by the recent legislation (2011) on late payment of small and medium-sized enterprises. This is defined by law as abuse of economic dependence, irrespective of whether such dependence is actually found to exist. The Authority applied this law (November 2016) to fine HERA (the lead company in a group of enterprises operating, inter alia, in the natural gas and electricity markets). The decision in question found a clause in the contract for the supply of gas metering systems that envisaged a payment term of 120 days from receipt of invoice to be unlawful.

Other interventions to protect the weakest consumers or repress unfair commercial practices that have a huge impact on the markets also deserve a mention.

These include debt recovery cases where consumers were persuaded to pay after legal action that was unfounded or was not conducted in the proper manner. Other cases involved economically disadvantaged consumers who were persuaded to take out loans subject to disproportionate conditions and obligations. In others still, consumers were placed under intense psychological pressure and tricked into accepting "loyalty cards" involving the purchase of products at hugely inflated prices.

Another case that is worthy of note in terms of protecting vulnerable consumers concerns advertisements suggesting, without any scientific backing, that a food supplement could enhance the effect of cancer treatments, even in patients undergoing chemotherapy.

Cases that had a huge impact on the markets and led the Authority to issue the maximum fines envisaged include one involving the Volkswagen group. Between 2009 and 2015 the group sold a range of diesel cars that had been approved by means of software – the use of which is banned under European law – that artificially altered the vehicles' behaviour during tests to measure polluting emissions.

Other aggressive practices with a broad-ranging social impact include certain methods used in teleselling and which gave rise to proceedings and sanctions involving the telecommunications sector and the activation of new contracts for the supply of electricity and gas. The sales technique in question can be classed as an unfair practice if the sales person exploits their asymmetrical access to information to act in an obstructionist manner to gain the consumer's consent. The consumer then – unwittingly – signs a contract, waives alternative arrangements (the contract in written form), and activates the service before the end of the period during which he or she can reconsider (the "cooling off" period), as guaranteed by law.

In all of the cases mentioned above, the Authority's intervention is intended to eliminate conduct that worsens inequality or undermines confidence in the functioning of the markets. This loss of confidence is very serious because it intensifies the crisis of legitimacy which, as I mentioned at the beginning of this introduction, is affecting the very concept of the market and because it obstructs transactions and the growth of demand. These phenomena are of notable significance in the credit sector, where informational asymmetry between enterprises and consumers is

particularly marked and where confidence and trust are the lynchpins of the system.

In this sphere, the proceeding (completed in September 2016) against an important bank (Banca Popolare di Vicenza) and involving, for the first time, a linked practice (loan-securities), is worthy of note. The aggressive commercial practice consisted of making the granting of loans to consumers conditional upon their buying shares or convertible bonds. The aim of this conduct was to cover the capital increase needed by the bank to cover its current operations.

Another significant case concerned variable rate mortgages. Here, the Authority accepted the commitments submitted by Unicredit in a proceeding to ascertain whether the bank had engaged in unfair practice by failing to apply the negative Euribor (Euro Interbank Offered Rate) rates to variable rate mortgage contracts. The case also involved Unicredit's failure to inform customers of the method used to calculate the interest rate it had used to address the continuing fall in Euribor rates. The commitments undertaken by Unicredit enabled it to rectify, *ab origine*, the economic damage suffered by consumers.

Alongside these consumer protection instruments, the Authority also applied antitrust enforcement and its advocacy activity in the credit sector. Taken together, the aim of these interventions is to restore consumer confidence and ensure not just stability but also efficiency and openness to competition. The promotion of structural reforms designed to improve governance and the competitive conduct of certain intermediaries can be set in this framework. This led, after the reform of the governance of *banche popolari* (a form of cooperative) in 2015, to the reform of *banche di credito cooperativo* (another form of cooperative bank) in 2016.

The Authority has also recently concluded a proceeding regarding SEPA-compliant Electronic Database Alignment (SEDA) for the management of payments in a new direct debit scheme. It pointed out that the Italian Banking Association (Italian initials ABI) and 11 banks, including the leading Italian banking groups, had entered into an unlawful agreement to coordinate their commercial strategies for the new payment receipt model. During the proceeding the parties proposed a new system of remuneration for the service which, if correctly implemented, will lead to the current overall cost of SEDA being halved. This will bring advantages for the companies using the service and, ultimately, for consumers and utilities customers.

9. Innovation, competition and consumer protection, with particular regard to digital markets

Without the additional resources produced by growth we are unlikely to be able to solve the social equity problems that affect many of the advanced economies. As I have already underscored, the consensus view is that competition stimulates innovation and economic growth.

Today, innovation means, above all, the digital economy. In last year's report we placed a great emphasis on this topic and on the role of the Competition Authority. In promoting the digital economy, there are without doubt more important instruments than competition policy. These most certainly include the "Industry 4.0" package, the implementation of which seems to be producing satisfactory results. Antitrust intervention, however, does help achieve that same objective.

This intervention, in 2016, was conducted along the following lines: 1) promoting the development of the ultra-broadband network; 2) overseeing trends in the Big Data economy; 3) promoting the elimination of regulatory obstacles to the sharing economy; 4) protecting consumers in online transactions by encouraging the development of e-commerce.

Taking the first aspect, the Authority issued two opinions on tenders for concessions to build and manage ultra-broadband network infrastructure in market failure regions. The first procurement ended with the award of the contract to Enel Open Fiber, which offered a significant reduction with respect to the upset price and an increase in cover, with fibre-optic services of 100 Mbps. The tender to provide cover for a further 5.5 million inhabitants, with a public investment (based on the upset price) of 1.2 billion euro, is currently under way.

Private investment is also continuing. In particular, after achieving landline coverage of 60%, Telecom Italia's strategic plan for 2017-19 envisages 5 billion euro in investment to speed up the deployment of the ultra-broadband networks. The new entrant, Enel Open Fiber, has planned investments worth 2.5 billion euro.

Significant investment is also under way for the mobile networks to complete 4G network coverage and upgrade to the 4G Plus technology, with the challenge of the future 5G networks fast approaching.

After the concentration between Wind and H3G, which was "Community" in scope, this technological evolution is being tackled by three infrastructure operators. The Authority made an active contribution to the assessment of this merger, thanks to the

coordination made possible by the European Competition Network (ECN), which links the European Commission and the national competition authorities. These operators will soon be joined by the new entrant, Iliad.

As regards the second line of action, Big Data, as we know, is a key element of the new economy and a driver of economic growth.

Given that data are a form of information asset, and that an economic value can be ascribed to them, the Authority found that a consumption relationship exists between undertakings and users every time the former offer a “free” service to the latter in order to acquire their data.

In this light, the method used by WhatsApp, after it was bought by Facebook, to obtain customers’ consent to transfer their data to the latter, was deemed to be aggressive. Through a message displayed when the app was opened, the company in effect forced its users to accept the new contractual terms in full by leading them to believe that it would not otherwise be possible for them to go on using the messaging service. But users could in fact have chosen not to give their assent to the data sharing and still continued to use the service. The Authority felt that consumers’ freedom to choose whether or not to allow their data to be transferred to parties intending to use this information in order to generate a profit from it should be protected.

WhatsApp was also the subject of another proceeding, in this case regarding the vexatious nature of some of the clauses in the “terms of use” of the application. These are standard contractual clauses that envisage – only to the benefit of the undertaking – a limitation of liability, the possibility of deciding unilaterally to interrupt the service, the option of terminating or amending the contract, and the possibility of withdrawing from orders, as well as the choice of jurisdiction for any disputes, the applicable law and the use of contracts mainly written in English.

Another proceeding concerning the forced transfer of personal information for marketing purposes followed the same lines. This time the Authority took action against Samsung since it made discounts for customers buying its products conditional upon registering with the company’s digital platform and giving their consent to the processing of their data. This conduct was found to be inappropriate since the data requested by Samsung were irrelevant and unrelated to the specific promotion in question and consumers were informed of the possible use of their information for marketing purposes only after they had made their discounted purchase. In this case too the company, to obtain data, had unduly influenced consumers’ ability to take informed decisions.

The third line of action involved the sharing economy, which has the potential to benefit consumers from numerous perspectives: it increases the range of choices open to them, offers innovative services that are different from those available in traditional markets, makes it possible to use resources that would otherwise go unused, lowers prices, and enables access to certain services by categories of consumers who do not use traditional services.

Again in 2016, therefore, the Authority took steps to remove the obstacles that the new forms of sharing economy have encountered.

More specifically, the Authority recently returned to the subject of the new high-technology mobility services (Uber and NCC) in exercising its powers of advocacy and calling for a reform of the entire non-scheduled mobility sector that would lead to greater openness to competition. In addition, the Regional Administrative Court (Italian initials TAR) of Lazio granted the appeal lodged by the Authority against a regulation adopted by Lazio Region introducing unreasonably burdensome and disproportionate requirements for non-hotel accommodation services which also use technological platforms.

In particular, the courts reiterated the principle that *“access to and the exercise of service activities, as an expression of freedom of economic initiative, cannot be subject to unjustified discriminatory restrictions; such restrictions, to be deemed legitimate, must in any case be justified on grounds of overriding public interest”*.

Lastly, as regards the fourth aspect, the Authority has again focused its attention over the past year on e-commerce, in the assumption that its development benefits consumers by expanding the range of choices available to them and reducing prices. It also benefits businesses by increasing their sales channels and thus contributing to growth. The full development of digital commerce – which in Italy has lower penetration rates than in the main European countries – is also hampered by consumers’ lack of confidence in digital transactions. Strengthening protection in this sphere therefore serves to increase consumer confidence and thus foster e-commerce.

Of the significant cases we examined I remember in particular the one regarding online ticket sales for events, 70% to 90% of which are now sold through digital channels. In this sector new problems have arisen with respect to the traditional methods used by touts to buy up and re-sell tickets. These led to an intervention against the TicketOne platform, which sells tickets on behalf not just of the event organiser (primary market) but also of the re-seller (secondary market)

The Authority found that the conduct of TicketOne, which holds the sole rights for online ticket sales, did not comply with the professional diligence criteria as it had not put measures in place to prevent people from buying large numbers of tickets through its channels for the “hottest” events. It thus failed to restrict speculative reselling on secondary market websites.

In the secondary market, the Authority’s intervention concerned the lack of transparency in the information provided to consumers by four companies running the main sites operating in Italy (Seatwave, Viagogo, Ticketbis and Mywayticket). It found that these companies, albeit to a different degree for each platform examined, had published inadequate and untimely information regarding certain aspects of the contract that are considered to be essential.

Many other cases on which the Authority has been working also involved the digital ecosystem. In particular, I would like to mention our efforts – most recently on airline booking sites – to combat “drip pricing”, the practice of revealing surcharges of various kinds only at a late stage in the online purchasing process. Also worthy of mention is the activation of services not requested by consumers and unilateral changes to contracts without justified grounds by telecommunications operators.

10. Promoting a culture of competition and compliance

Our horizons are not limited to the enforcement of competition rules, consumer protection and advocacy. We have recently been placing a great emphasis on the culture of competition and compliance. This dimension includes the application of the guidelines on sanctions, with notable reductions in the size of the fines for companies that have adopted compliance programmes, and the creation of a “competition code” designed to make competition law easier to access and understand, including for small businesses, which will also be able to have recourse to it.

Other initiatives include courses and talks in schools, which were conducted in agreement with the Ministry for Education, the Universities and Research. The topics covered included the meaning of competition and consumer protection (Authority representatives met over one thousand pupils) and the recent creation of an annual prize for anyone promoting a culture of competition and consumer rights among students and information operators. The Authority also used social media to publicise our work, and held a large number of seminars and study events which saw the participation of eminent academics and experts, including from abroad, and representatives of our stakeholders.

Of course, the interventions of the Competition Authority are only one element – important as it may be – of a broader range of public policies and reforms, based on a comprehensive vision, that must be implemented at the national and European levels to promote inclusive and equitable growth. Because as J. F. Kennedy said in his speech of more than half a century ago, “a rising tide lifts all boats”.

11. Markets, state capitalism and the protection of competition at the global level

I have always underlined that the Competition Authority is a double-faced institution, like the god Janus. It is a national institution and, at the same time, a European institution. That is because it applies directly, and without national intermediation, European law and the interpretations given to it by the European courts and the Commission’s “soft law” acts, and because it exists within an institutional network that includes the Directorate-General for Competition (DG-Comp) and the competition authorities of all the member states.

In 2016, as evinced by my observations thus far and the full report sent to Parliament, the Authority again engaged in intensive and close interaction and cooperation with the European Commission and the Competition authorities of the other Member States.

Today, however, I would like to underscore the importance of the Competition Authority’s global dimension. In 2010 Ian Bremmer published a book whose title ran counter to current (at that time) thinking: “The end of the free market”. The focus of his analysis was the success of state capitalism in the East and the growing role played by state-owned companies, public financing, easy credit, and sovereign funds, which change the level playing field in global terms to the detriment of the businesses and workers of the advanced economies, where the state has withdrawn from the economic stage. Today, many commentators believe that his analysis is sound, a view that could add grist to the mill of protectionism.

But there is another possibility too: that of safeguarding globalisation while at the same time driving for a progressive reduction in market distortion. This can be done by creating mechanisms to protect strategic high-technology industries from predatory strategies by companies that have access to public capital (in line with the proposal to redraft the “golden power” legislation submitted by Italian, French and German government ministers). Such strategies are intended to steal the technologies themselves as well as technological, industrial and commercial know-how, or to delocalise production. We can also ask other countries, more generally, to apply reciprocal conditions to protect competition.

From this last perspective, the dialogue between Competition authorities at the global level plays a by no means secondary role. This is not just a question of coordinating our interventions to tackle competition offences that have a transnational dimension, but also one of promoting compliance with the laws protecting competition in non-European countries, not least to protect our businesses operating in the markets of those countries.

12. To conclude

The intellectual and professional challenges that we need to address each day are colossal, as demonstrated by our attempts, successful and otherwise, to help achieve more inclusive and equitable growth.

All of this work is only possible thanks to our staff, whose professionalism is a prime example of Italian excellence, and who engage in a constant and on-going dialogue with similar institutions operating in the European and global networks of competition authorities. The tasks performed by the Authority are facilitated by our routine cooperation with the Italian Finance Police, whose expertise and sense of responsibility provide valuable input to our investigations.

I feel duty-bound, therefore, to extend a warm thanks to the men and women who dedicate their professional and human commitment to the Italian Competition Authority, and to the members of the Italian Finance Police and the Board of Auditors with whom we work. I would also like to express my gratitude, and that of the entire Board, to the Secretary General, the Head of the Chairman's Office, the Chief of my staff, the assistants in the offices of the Chairman and the Commissioners, and the patient staff in the Chairman's secretariat.

An equally warm "thank you" goes to the other institutions with whom we enjoy a fruitful dialogue: the Regional Administrative Court of Lazio and the Council of State, whose valuable input we always try to learn from; the office of the State Attorney General, which helps us with supreme professionalism; the Public Prosecutor's office in Rome; the Court of Auditors; the other independent authorities; the Directorate-General for Competition at the European Commission; the Competition authorities of the European Competition Network and the International Competition Network. I also wish to thank the Speakers of both branches of Parliament, who have followed our work with constant attention and always supported our independence, which for us is a source of great pride. A special thanks goes to the lawyers of the Competition community, who help draft our competition law, and to the

consumer protection groups whose cooperation is of the utmost value to us.

The culture, talent and independence of the Commissioners, Gabriella Muscolo and Michele Ainis, have been an endless source of stimuli and commitment that have enabled the Authority to tackle complex cases and continue to play an authoritative role on the international stage. I am indeed fortunate to be able to work with them.

Lastly, allow to express my deep gratitude to the distinguished custodian of our institutions and constitutional values, the President of the Republic, Sergio Mattarella, who we will have the honour of meeting tomorrow.

And a warm "thank you" to all of you, for your patience in listening to me today.