Annual Report

Introduction by the President
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Mr President of the Republic, your presence here today is a great honour and bears witness to the importance that the Italian Competition Authority has acquired in our country's institutional and economic framework. I wish, therefore, to express my deep gratitude, and that of the Board and of all the officials of the Authority, for the close attention you have always paid to our institution and the functions it performs.

Honourable Speaker of the Senate of the Republic,
Honourable Speaker of the Chamber of Deputies,
Distinguished Members of the Government,
Honourable Members of Parliament,
Authorities,
Ladies and Gentlemen,

1. This is my seventh and last report to Parliament on the activities of the Italian Competition Authority.

It is not my role to express a judgement on these seven years. However, it seems to me that it might be useful give a brief – as always – overview of the essential direction we have followed, the principal problems we have addressed and the challenges still facing us. To do so, I will pick up some of the threads from previous years' reports.

The years since November 2011 were characterised by the "Great Transformation" that affected the economy, politics and the institutions. That transformation posed unprecedented challenges for antitrust authorities throughout the world and especially in Europe.

The Great Transformation was fuelled by three factors, each of which brought with it a "destructive" innovation.

First, the economic-financial crisis that originated in the United States and then moved to Europe, where it took the form of a sovereign debt crisis, a banking crisis and a crisis of the real economy. This was followed by a transformation, as yet only partial and insufficient, of the economic governance of the euro area.

Second, the fourth industrial revolution, based on digital technologies and which developed with a speed unknown in

previous industrial revolutions (smartphones, for example, were only introduced in 2007, less than five years before my presidency began). This revolution created new markets, new business models and new monopolists, with resulting profound structural changes not only in the ecosystem of the internet and related industrial sectors (most notably in telecommunications), but also in traditional industries and sectors (from hotels to urban transport to manufacturing, with the application of artificial intelligence).

Lastly, the full development of globalisation which, together with its benefits, has led to increased inequalities in the West and, conversely, to the emergence of new calls for protectionism. These have affected, especially after the last American elections, not just international trade but also the European internal market and even nations themselves.

More generally, historical processes of such a scope have broken the constitutional equilibrium – an equilibrium that was established in the years following the Second World War as a result of the interaction between the international order, European integration and national constitutions – between democracy, market and social cohesion. The European model had succeeded in achieving a harmonious balance between the institutions and the values of these three spheres. Today, that balance no longer exists.

In recent years a feeling of anxiety has spread among European citizens. That feeling has thrust into the foreground the demand for security that is the foundation of the social contract. Therefore, the times we are living through are characterised by a “return to Hobbes”: the quest for security that was a characteristic of the modern Leviathan.

These processes have inevitably also affected the antitrust authorities because, since the early days of competition law, with the Sherman Act of 1890, they have found themselves at the crossroads of the market, democracy and social cohesion

In the presence of such radical changes it was natural for us, the “enforcers”, to again ponder the fundamental questions, and first and foremost the goals of competition policies and antitrust law.

To the traditional focus on consumer welfare and on maintaining the competitive structure of the markets – which have been the hallmarks of the practice of competition law in Europe – new objectives have been added. These are: to stimulate innovation, to spur the modernisation of the structure of the Italian economy with a view to increasing its competitiveness, to achieve savings for the

public accounts, and to address inequalities by combating inefficient rents .

As regards the last-named and still controversial issue, I will merely observe that it is now widely acknowledged that increased inequality in the West has weakened democracy and, in some countries, is an obstacle to economic growth itself. Of course, policies to combat inequalities concern other sectors and political-institutional actors than the antitrust authorities.

However, effective antitrust enforcement also has a role to play. Indeed, the enforcement of competition law reduces rent-seeking, which equate to an appropriation of resources by those who have a high degree of market power by taking those resources from others. When market power goes unopposed, the result is an increase in the producer surplus, which increases the wealth of shareholders and senior managers, i.e. those who are at the higher levels of income distribution. For that reason, in the years of the crisis an authoritative school of thought – from Stiglitz to Piketty, from Fox to Baker and Salop – called for a revitalisation of antitrust activity as an effective means to combat inequality.

These goals have had an impact, as we shall see, on the choice of priorities and policies followed in the last seven years.

These choices have led, first and foremost, to a strengthening of sanctioning policy. In Italy, each year of my presidency has seen an increase in the amount of fines applied with respect to the previous year. In the period under consideration we issued fines totalling just under €1.5 billion and opened more than 130 cases. Decisions with commitments, which exclude sanctions and which had characterised the previous period, diminished, from 49% of total decisions in the previous seven years to about 26%. Irrespective of the theoretical debate on the optimal level of penalties, the Authority has insisted on the importance of their deterrent function, even during periods of economic crisis. Similarly, we have sought to make fines easier to predict, by adopting guidelines for the calculation of fines in October 2014, following the model of those issued by the Commission.

One serious problem, that of leniency programmes, remains to be solved. These programmes enable companies that are members of cartels to report the existence of antitrust offences and to benefit from exemption from or a reduction in the penalty applied to them. This is the principal instrument used by the antitrust authorities in Europe and the rest of the world to suppress cartels. In Italy, however, it is struggling to get off the ground also because of a legislative framework that hinders its broader diffusion.

2. Competition is a driver of innovation and innovation is the engine of economic growth. Italy's main problem is the lack of growth in the last 20 years of our economic history.

Per capita income has not changed since the start of the last decade. Today, thanks to the recovery of economic growth in the last two years, it has returned to the levels of 1999. The consequence of the long period of stagnation is that we have become poorer with respect to the rest of Europe. In 1999 per capita income in Spain was lower than in Italy. Now, Spain's economy is growing at double the rate of our own. Ireland and Portugal too have emerged from the great recession more quickly than we have, even though they had to undergo austerity programmes much more severe than those adopted in Italy.

If we do not continue along the pathway of economic growth, and indeed increase it, it will be difficult to reduce the debt/GDP ratio. And it will be even more difficult to find the necessary resources to address the redistribution policies that are rightly called for to respond to the need for security expressed by those who have suffered the consequences of the economic-financial crisis, the disruptive effects of the fourth industrial revolution, and widening inequality.

Innovation is the result of a combination of different factors, including the adoption of the appropriate public policies to achieve it. Competition authorities too have a role to play in this sphere. First, in choosing the sectors in which to intervene, and then in ensuring that their intervention spurs rather than hinders innovation.

This challenge is particularly difficult when we are dealing with innovation linked to the digital revolution. Today, innovation is almost synonymous with the digital economy. Of course, in the face of waves of disruptive innovation which are redefining the markets and which so far have succeeded in rapidly replacing the almost monopolistic incumbent with a new dominant player, the risk is that antitrust enforcement will have the unwanted effect of obstructing innovation.

However, while the risk of over-enforcement needs to be borne in mind, at the same time we must not be caught out by the opposite danger, that of under-enforcement. The competition authorities have a crucial role to play in safeguarding the innovation process against all attempts to block it.

3. In this respect, in our recent experience certain issues have been particularly significant.

The first is that, in the new economy, access to digital services is a vital component of competitiveness and so, to express their growth potential, all sectors need a network infrastructure with sufficiently ample bandwidth. The rollout of broadband and ultra-broadband in Italy has been held back by the absence of cable television, while in other countries it has been possible to use cable infrastructure to create broadband connections. However it has also been held back by the behaviour of the incumbent, Telecom Italia, which holds the copper network monopoly.

Telecom had an incentive to exploit the privileged position and guaranteed income arising from its ownership of the network infrastructure, which would be difficult to reproduce, rather than investing in the fibre optic network. Competitors were systematically obstructed in seeking access to this essential facility – the network – and therefore in offering their customers broadband network connection services. For these reasons, Telecom was fined 104 million euro for abuse of dominate position. Competitors subsequently pursued follow-on actions with a view to obtaining compensation for the damages suffered.

This initial intervention was followed by others, again with the aim of ensuring access to the network under non-discriminatory conditions. The result was a change in the incentives of the incumbent. When the possibility of obtaining a rent as a result of the ownership of the copper network was brought to an end, competition moved to the sphere of innovation, with Telecom embarking on an important plan to build a fibre optic network. A new, non-vertically integrated operator (Open Fiber) was set up and began to implement its own plan for investment in fibre optic networks.

The development of these networks is one of the great infrastructure challenges facing Italy at this time. It is a process that the Antitrust Authority has been following very closely. In 2014 the Authority published the results of a market investigation conducted with the regulator for the communications sector and in subsequent years issued a number of opinions regarding the calls to tender for the construction of public networks in areas of market failure.

Dynamic competition is bearing fruit. In 2017 about 87% of households (compared with 32% in 2014) had been reached by a new-generation fixed network, although only 22% had access to entirely fibre optic networks. However, Italy is still a considerable distance behind Europe in the actual use of broadband and ultra-broadband by households.

The Antitrust Authority continues to monitor the situation to ensure that the current dynamism continues to be driven by competition which produces innovation. This year the Authority issued a decision giving the green light to the agreement between Telecom Italia and Fastweb to build a “fixed fibre optic to the home” (FTTH) telecommunications network in Italy’s biggest cities, through a jointly owned company called Flash Fiber. Those elements of the agreement between two of the leading operators in the market that had aroused competition concerns were resolved through changes made to the joint project by the companies involved.

In the mobile telephony market – in a period when operators have been engaged in building the new 4G networks – the Authority cooperated closely with the European Commission in analysing the concentration between Wind and H3G. The operation was authorised only after remedies were introduced that very recently enabled a new operator, Iliad, to enter the Italian market. Again in the mobile telephony sector, the Authority recently adopted precautionary measures against the decision by the principal operators – on the occasion of reconfiguring the invoicing cycle for their offering from four weeks to one month – to make a coordinated and uniform change to increase the nominal line rental. The Authority’s provision had immediate repercussions on consumers too because, immediately after the precautionary measures were adopted, the operators announced that the increases would be smaller than previously indicated.

Developments in the telecommunications networks are increasingly interlinked with innovation in the television sector, which is subject to innovative dynamics deriving from the development of online audiovisual services, with evident benefits for consumers. At the global level we are witnessing wide-ranging processes to redefine business models, content offering and ways of consuming that content. The structure of the sector is also undergoing profound changes, in the direction of ever-growing convergence. Operations on a European and global scale are tending to increase both the degree of horizontal market concentration and vertical integration between the operators controlling the networks and those producing the content (we need only consider, for example, AT&T’s recent acquisition of Time Warner in the United States).

It is no coincidence that in recent years the Antitrust Authority has found itself assessing a large number of concentration operations in the media sector. For example, the Authority dealt with the plan for the acquisition of RaiWay’s transmission towers by EI Towers (withdrawn by the parties after the results of the Authority’s preliminary investigation were published), the acquisition of Rizzoli by Mondadori, the RTI/Finelco operation in the radio sector, the

acquisition of ITEDI by the Gruppo Editoriale l'Espresso and the concentration between Seat Pagine Gialle and Libero.

4. A second aspect of the Competition Authority's activity in the digital economy sphere is linked to the fact that to engage in an economic activity it is becoming increasingly necessary to do so through online platforms. These are becoming true gatekeepers and are in a position to control access to the market.

On this subject, I can cite the case involving Booking.com, with particular reference to one clause – the "Most Favoured Nation" clause – that was included in contracts with hoteliers. This created a constraint that was liable to obstruct competition and innovation from other online platforms, and from other channels that the hotels themselves might set up. The case was closed rapidly and simultaneously in Italy, Sweden and France by accepting the undertakings proposed by Booking.com, which entailed the amendment of the clause in question. After this amendment, the market once more displayed dynamism and innovation. Alongside Booking.com and Expedia new competitors have entered the market and offerings made available through channels set up by the hotels themselves have been developed.

Other cases, in which the innovation that flourishes on the web is obstructed by behaviours and rules designed to protect more traditional market operators, are very different in nature. In many European countries, and certainly in Italy, there has been great resistance to the sharing economy and its platforms.

We certainly must not underestimate the disruptive impact of these platforms on traditional services and so on all those who earn their living through them. Just as it is right and proper to put in place forms of protection for the workers employed in these new markets, we cannot ignore the advantages offered by the platforms concerned. They expand the range of choices available to consumers, they provide innovative services, they enable the use of resources that would otherwise be under-used, they lower prices, and they make it possible for consumers who do not use traditional services to access new ones.

As regards the sharing economy, the Italian Authority intervened both by using its powers of advocacy to promote a system of rules that does not block the development of platforms like Uber, and by using the wide range of legal instruments at its deposal to remove rules that obstruct competition. For example, in the regional administrative court (Italian initials TAR) the Authority impugned a regulation adopted by Lazio Region which obstructed the activity of

platforms such as Airbnb. The Court accepted the grounds submitted by the Authority and annulled the restrictive provisions of the regulation.

Nor was there any lack of antitrust enforcement actions to remove obstacles to the development of new technologies for access to and the use of traditional services. That was true of the very recent decision ascertaining the anti-competitive nature of the non-competition clauses in the articles of association and regulations of the main radio taxi firms operating in Rome and Milan. These restricted taxi drivers to devoting all of their operational capacity to a single radio taxi operator.

The Authority verified whether these clauses were liable to lead to a substantial and lasting effect of closing the market for the collection and sorting of demand for taxi services and thus obstruct access to new operators who adopt a different and innovative business model, such as the Mytaxi platform, with significant benefits both for consumers and for taxi drivers.

5. Lastly, we have the issue of the immense market power of the web giants – such as Google, Amazon, Facebook and Apple – and the emergence of new monopolies. These are fed by a combination of network effects, economies of scale, lock-in practices, and the big data economy. Here the powers of, primarily, the European Commission enter into play, in view of the extent and scope of the phenomena under consideration (we need only think, for example, of the fine recently imposed on Google).

There is, however, also space for the national authorities in the context of the European Competition Network (ECN). Suffice to mention the case, still pending before the *Bundeskartellamt*, of the use of users' personal data following the concentration involving Facebook and WhatsApp.

We then have another major issue: big data as a source of market power for hi-tech companies, which can use this new resource to close markets and block the innovation that comes from new actors.

Numerous cases were opened by the Italian Authority, using its consumer protection powers against unfair commercial practices which involved nearly all of the network giants and which, in view of their impact on the way they are required to propose their commercial offering, have indirect repercussions on competition dynamics.

In the WhatsApp case, the Authority intervened both to investigate the presence of unfair clauses in contracts with users, which it

succeeded in eliminating, and to sanction an aggressive commercial policy.

The Authority challenged WhatsApp for influencing users' choice by leading them to believe they had to accept the new conditions (i.e. surrender their data) in order to continue using the service when updating the conditions of use. The principle was affirmed whereby an apparently free service which, however, involves the surrender of personal data that are then used for commercial purposes, constitutes a true contractual relationship governed by the legislation for the protection of consumers against unfair commercial practices.

More recently, the Authority opened a proceeding, which is still ongoing, into Facebook. This case involves two possible unfair commercial practices: one for failure to provide sufficient information, at the time of registration, on the use of users' personal data, and the other for the aggressive way in which the operator has set up the platform, envisaging the automatic surrender and sharing of data with third parties and only later giving users the opportunity to deny authorisation.

Moving from the big data economy to e-commerce, we should underscore that the Authority has sought to promote this new mode of consumption, which grew considerably to a total value of 24 billion euro in 2017, an increase of 17% on 2016.

In this light too, in recent years the Authority has intensified its consumer protection activity with respect to online transactions, with a view to encouraging the development of ecommerce, which in our country has not yet reached levels comparable with those of the other main European countries.

Of the Authority's most significant interventions, the one involving the Amazon Group is worthy of mention. The Group had allegedly omitted to provide important information, or had provided insufficient information, to consumers during the purchasing process. In particular, the mandatory pre-contractual information regarding the right of withdrawal and the legal guarantee of conformity, and regarding the conditions for after-sales support and the completion of the purchase contract, were deemed to be inadequate.

The Authority also turned its attention to comparator sites. These sites are very useful to consumers wishing to quickly carry out an online comparison of the commercial offerings of different operators. However, they must provide clear, truthful and correct

information on the products on offer to users and to the parties offering them for sale, with respect to their value for money.

In addition, we have made considerable efforts in suppressing drip pricing, i.e. companies' failure to immediately disclose various additional fees or charges during the online purchasing process, and in challenging companies which do not deliver the goods purchased to customers who have correctly completed online purchases.

Lastly, I would like to mention the role played by the Authority in combating the production and sale of fake goods. This has led to the closure of numerous sites through which fakes, including of well-known Italian brands, were sold.

The protection of competition and of consumers in the digital economy will continue to pose new challenges for the Authority, which will need to equip itself, and remain equipped, to understand the new markets. I will mention just one of the many problems that the Authority will need to address: the role of algorithms in coordinating the economic activities, and in particular the prices, of competing firms. Will it be possible for collusion that is no longer achieved through understandings between people but directly by machines and algorithms to be sanctioned by the Antitrust Authority, and under what conditions?

The Authority is ready to grasp these challenges and, in this respect, I would like to remind you that we recently conducted a competitive recruitment procedure to select information technology and algorithm experts.

6. While cases of abuse of dominant position were the most numerous in the past – not least because they involved preventing former monopoly holders from obstructing the market opening process –, in more recent years the authority has focused on the difficult task of challenging cartels. These block innovation and, in certain sectors, also translate into higher expenditure for the public purse and so a heavier burden for tax payers, or have particularly serious consequences in terms of social equity.

At 31 May 2018, in fact, 61 cases involving cartels had been concluded, compared with 40 involving abuse of dominant position.

We paid special attention to bid rigging in public contracts, with numerous cases involving the central purchasing body for the public sector (CONSIP). Of these decisions, I will mention one regarding a procurement procedure in 2015, for a total of about 1.6 billion euro, for school cleaning services, in which a number of firms had reached an agreement to share out the various lots.

Turning to the private sector, the decision that led to a fine of 180 million euro being imposed on two pharmaceutical companies (Roche and Novartis) is particularly significant. The companies had agreed to promote an extremely expensive drug (Lucentis) to the detriment of a much cheaper one (Avastin) for the treatment of a serious ophthalmic condition (macular degeneration). The agreement concerned the spreading of deliberately exaggerated information about the poorer safety record of the cheaper drug to impel patients and doctors to use the dearer alternative.

The understanding translated into considerable economic gains for the two companies, given the complex licensing relationships and shareholdings between them, and rising costs for patients and for the health system. In fact, the difference in cost between the two drugs was exorbitant. One dose of Avastin cost from 15 to 18 euro. But the price of an equivalent dose of Lucentis was over 900 euro.

The Authority's decision was confirmed by the administrative court of first instance. Subsequently, following an appeal to the Council of State, the question was referred to the European Court of Justice for a preliminary ruling. The Court of Justice issued a judgment in 2018 confirming the interpretation of Article 101 of the Treaty for the Functioning of the European Union proposed by the Authority. This judgment is very interesting, not just regarding the relationships between competition, on the one hand, and regulation and intellectual property rights on the other, but also because, by endorsing the opinion of the Italian Antitrust Authority, it seems to set out a new dimension of hard core illegality. In other words, an offence involving the spreading of information that was so alarming and misleading that it altered the perception of risk and manipulated the competition process, by nudging medical prescriptions towards the more expensive product.

Conduct of this nature could also be applied in other spheres, placing the question of the legitimacy of companies' conduct with respect to information in the spotlight. It is linked to the concomitant provisions governing the protection of consumers against misleading advertising.

7. Again in the pharmaceutical sector, the Authority intervened on several occasions to sanction abuses of dominant position; these are particularly objectionable as they affect highly vulnerable consumers.

From this perspective, I would like to briefly mention the case of a dominant company (Pfizer) which abused the patent protection of a certain drug to obtain an undue extension of the exclusive rights

system and thus delay the entry of generic drugs, which cost considerably less than the originators, to the market.

In another case, dating from 2016, a South African multinational (Aspen) was fined using the rarely applied theory of harm of excessive prices. This was used after a price increase of over 1500% for certain cancer drugs, which was entirely unjustified in terms of price structure. It is very interesting to observe how this type of abuse has again begun to appear in Europe: immediately after the Italian decision, the Commission too opened a proceeding against Aspen.

Following the Authority's intervention, the prices of the drug, at the end of the negotiations with the Italian Medicines Agency (AIFA), were reduced by 80%.

8. Many of the cases that I have mentioned concern regulated sectors and confirm the principle, which is well established in European and national law, whereby regulation does not rule out antitrust enforcement. However, we must acknowledge that in these areas there is always a risk of duplication and of conflicting positions between antitrust authorities and regulatory authorities. These risks can only increase in the big data economy, because competition profiles and consumer protection profiles are increasingly intertwined with those of protecting personal data, which falls within the remit of the privacy protection authorities, and those regarding regulation. We have addressed these problems by promoting specific protocols of understanding between the Competition Authority and the other independent authorities so as to encourage exchanges of information and reciprocal consultation and thus prevent conflicts of competence. So far this solution has worked rather well.

The spirit of cooperation has also extended to the conduct of joint fact-finding investigations involving two or more authorities. On this point, the investigation on ultra-broadband conducted by the Competition Authority and the Communications Authority (4 November 2014), or the more recent investigation (not yet completed) on Big Data in Italy, conducted jointly by the two Authorities and the Data Protection Authority, are worth mentioning.

The attention paid by the Authority in recent years to collusion during procurement procedures has necessarily led to interaction with the Public Prosecutor's Offices who have had to address the criminal implications of such cases. Hence the protocols of understanding that have been signed by the Authority and the

Public Prosecutor's Offices of Rome and Milan, which have led to cooperation that has been both highly confidential and highly effective.

9. In the period under consideration, the Antitrust Authority examined 894 concentration operations and conducted 25 in-depth investigations, as well as seven investigations to assess applications for amendments to measures imposed in previous operations. The sectors most involved include media, the distribution sector and energy, and the banking and insurance sectors. The solution involving the prohibition of operations posing serious competition issues proved to be wholly exceptional, given that the Authority generally succeeded in resolving these issues by requiring the parties to adopt appropriate corrective measures.

Since 2013, only mergers and acquisitions involving companies that, taken together, exceed two given turnover thresholds are referred to the Authority. This has led to an extremely significant reduction in the number of concentrations examined, a problem that has not been fully resolved notwithstanding the reduction in the second threshold (from 50 to 30 million euro) established by the annual market and competition law in 2017. Even after this change, however, the criteria established by the law for the notification of concentration operations appear to be too broad. I therefore must reiterate, once again, the need to identify solutions that enable the Authority to carry out more wide-ranging checks on concentration operations.

We should also bear in mind that, at the international level, questions have been raised as to whether checks should be carried out on transactions that, although of high-value, are taking place between companies that at the time of the operation are not generating high sales. I feel that this solution would be advantageous, not least with a view to ensuring the effectiveness of antitrust checks in the digital sector, in which acquisitions of start-ups and innovative companies by the big web operators might otherwise not be subjected to effective scrutiny.

10. In the Italian experience too, and especially in recent experience, two spirits of competition law have clashed. The spirit that places the need for certainly of law and predictability of decisions in the forefront and which favours a more formalistic approach to cases. And the spirit that is more concerned about false positives and fears that, in dynamic markets and in a period of ongoing and growing transformation, economic efficiency is being undermined in the name of an abstract idea of competition. It is

also true that, since the Commission introduced a more economic approach, a long time has gone by without the correct balance between these two needs being established unequivocally.

In Italy we have sought to place more weight than in the past to an effect-based approach, and the creation of the Chief Economist's office is part of this effort. I think there is still a great deal to be done to bring the Competition Authority to the point where it firmly embraces this approach, combining it with the need for legal certainty that is and remains a fundamental principle of our legal system. In this sphere the lessons handed down by the Court of Justice are of vital importance and the recent judgment on the Intel case provides important food for thought.

11. Advocacy is an important part of the work of a Competition Authority. And it is all the more important in a country like Italy where a competitive economic structure with companies that are world leaders in their sectors co-exists with an economic structure that remains very underdeveloped, with extremely low productivity levels. The causes of this economic dualism include public regulation that protects certain sectors from competition. It creates positions of privilege and guaranteed income, encourages unhealthy links between public and private, gives rise to a sort of relationship-based capitalism, and burdens enterprises with a disproportionate amount of red tape.

In short, on the one hand enterprises that are perfectly well integrated in the global value chain and in international markets, and on the other, protected enterprises that display low productivity and seek to obtain or maintain positions of privilege.

The Authority has engaged in intensive advocacy activity to open protected sectors to competition and modernise the structures of the Italian economy. In the course of my mandate 414 advocacy measures have been adopted. Two-thirds of these were addressed to Parliament or to a central government body, while one third was addressed to Regional and local authorities.

In 135 cases the Authority used an instrument which is unique in Europe: the possibility of proposing to a public sector body an opinion designed to achieve the removal of an anti-competition act or regulation. And, if the public body concerned does not comply with the opinion, of impugning the act or regulation in the administrative court.

In 76 cases we sent an opinion to the Prime Minister's Office asking it to impugn in the Constitutional Court regional laws that obstructed competition. The Authority constantly monitors the

outcome of its advocacy activities, which have an overall success rate of around 50%.

Activities to promote competition include sectoral surveys, which the Authority conducts to understand the dynamics of certain markets and how they function, in order to pursue changes in the law or antitrust enforcement initiatives. In the period under consideration we carried out 16 fact-finding surveys in significant sectors for the Italian economy ranging, in addition to the cases already mentioned, from waste management to vaccines, to local public transport.

12. The protection of competition and the protection of consumers are closely interdependent. I believe that in Europe the Italian model, which entrusts these two tasks to one and the same institution, is a success story.

This model has become even more strongly established by effect of Legislative Decree No 21 of 2014. This act swept away previous doubts and entrusted an overall competence to the Competition and Market Authority in matters of suppressing unfair commercial practices and misleading advertising, which also extends to the regulated sectors.

The protection of competition entails intervention on the supply side by ensuring an open market structure. Protecting against unfair commercial practices entails intervention on the demand side by helping increase consumer confidence, incentivising competition based on enterprises' actual merits and not on deception, and, by this and other routes, stimulating innovation. I should add that combining the two tasks enables the authority to increase its knowledge of market dynamics and their transformations.

In the period under consideration 646 proceedings were completed for unfair commercial practices and 39 for inequitable clauses. Fines totalling over 230 million euro were issued and more than 300 proceedings were closed through moral suasion.

In the digital economy, as I have already said, consumer protection instruments have been extensively used in recent years. Decisions in this sphere were adopted much more quickly than those required by antitrust procedures and entail changes in companies' behaviour that might indirectly strengthen competition in the markets.

However, there was no lack of interventions in more traditional sectors. The Authority dealt with questions that, in spite of previous decisions, were the subject of new complaints by consumers, on matters such as unsolicited activations and the treatment of billing

queries from customers. The intention here was to ascertain compliance with previous decisions taken by the Authority on these matters. The Authority also addressed new topics for investigation such as the sale of diamonds “as an investment”. The stones were being described as a profitable, safe and immediate investment while there was no certainty whatsoever as to the profits they would bring, which would in any case have been made only over the very long term.

In the banking sector, the Authority made a significant contribution to the complex and long-standing problem of “anatocism”, i.e. the charging of compound interest. It discovered the existence of aggressive commercial practices by some leading banking intermediaries, designed to surreptitiously obtain authorisation for, essentially, charging interest on interest.

The Authority also intervened on several occasions against “tie-in practices”. It found cases of unfair conduct by a number of operators who had made the disbursement of mortgages and loans to consumers dependent upon the purchase of the bank’s shares and/or bonds or upon opening a current account with the same bank.

13. The legality rating was introduced in 2012 with a view to promoting a more extensive adoption of ethical principles in corporate spheres. To this end, it was envisaged that possession of this rating would be taken into account when granting public funding and access to bank credit, in accordance with the arrangements envisaged by an inter-ministerial decree.

The instrument echoes the functionalist theory of Norberto Bobbio [an Italian legal and political philosopher], according to which law cannot be viewed in terms merely of a coercive system to discourage unlawful acts, but must also have the function of promoting socially desirable acts by providing for incentives. And the rating “message” serves precisely that purpose: complying with the law is not just right and proper, it is also advantageous.

In view of the number of applications received over time, the “message” has got through to operators: to date, more than 6,500 rating applications have been examined.

14. The European Convention on Human Rights has had an undeniable influence on the sanctioning proceedings of the independent administrative authorities, after the Menarini and Grande Stevens judgments of 27 September 2011 and 4 March 2014 respectively. These rulings asserted the essentially criminal

“weight” of the penalties issued by the Antitrust Authority and by CONSOB (the Italian Securities and Exchange Commission) for the purpose of applying Article 6 of the Convention.

Partly in the light of the second of these decisions, in the Authority we have implemented a rigorous separation between the functions of the investigating offices and the decision-making powers of the Board. This, along with the specific procedural guarantees that accompany proceedings before the Authority to ensure equality of arms between the “prosecution” and the “defence”, undoubtedly aligns the current model more closely to the principles expressed by the Court of Human Rights in the Grande Stevens judgment.

These developments have helped find a positive solution to the question of legitimising the Authority’s Board to raise questions regarding the constitutional legitimacy of laws in front of the Constitutional Court (Decree No 1 of 2018). All of the characteristics identified by constitutional law for legitimisation to submit, on an interlocutory basis, questions regarding the compliance of domestic law with the Constitution were found to exist. Independence, impartiality, the objective application of the law and regulations, the guarantee of the right to defence, the Antitrust’s nature as adjudicating authority: all of these characteristics convinced the Board that it was possible to explore this route. In this way, moreover, the possibility of “free zones” from constitutionality checks and controls that might otherwise exist in the system of laws and regulations will be reduced.

The case law of the European Court of Human Rights also confirmed, from another perspective, the success and quality of the Italian system of ascertaining whether or not antitrust offences have been committed. The above-mentioned Menarini judgment recognised the extensive nature of the checks performed by the administrative courts on the Authority’s provisions. I have always upheld the need for careful checks, including in terms of full access to the facts, with a sole limitation: that of prohibiting the court’s evaluation from replacing that of the Authority. I am convinced that scrupulous scrutiny in the courts can only increase the legitimacy of the decisions we take.

In the light of all this, it is only natural for us to be especially pleased with the results of the cases we have been involved in over the period (2012-18). 78% of the rulings of the TAR of Lazio (regarding decisions adopted in both competition and consumer protection matters) were in favour of the Authority, the provisions adopted being confirmed. Of this 78%, only in 15% of the judgments did the TAR review the fines imposed by the authority.

With regard to cases that went to appeal, over 70% of the judgments of the Council of State came down in the Authority's favour. Of these, only in 10% of cases did the appeal court change the penalty originally imposed by the Authority and subsequently reviewed by the TAR of Lazio.

15. From an organisational perspective, the fact that we have succeeded in re-introducing, through an agreement drawn up with the trade unions, an assessment mechanism for Authority employees based on merit should be underscored. Merit is, indeed, the only compass that should guide personnel decisions.

Gender equality is a decisive factor to enable the institution to operate and be managed in a balanced manner. In the Authority, over the last seven years management positions awarded to women have increased, to over 50% to date.

We have also followed a careful spending policy by rigorously applying all of the spending review provisions; by making shrewd procurement decisions, which are always managed with the utmost transparency; and also by implementing a number of spending cuts. For example, the cost of service vehicles was cut by 86%, business trip allowances (including for senior management) were significantly reduced (by about 35%), and overtime costs decreased by 23%.

These cost reductions have made it possible to constantly reduce the rate of the contribution received to fund the Authority.

16. National competition authorities are like Janus: national institutions on one face, European institutions on the other. Indeed, they directly apply European competition law and handle cases of European significance. They cooperate with the Commission and with each other through the ECN to decide how to allocate cases, reach agreement on decisions and rulings, exchange information, and conduct investigations.

Regulation No 1 of 2003 achieved a balance between the grounds for centralisation and those for decentralisation, fostering efficient judicial and economic integration that enjoys robust legitimisation. The experience of the ECN is a success story that should be replicated in other sectors. Competition authorities also help form European law in the sectors within their remit.

In particular, the Authority has taken an active part in formulating and transposing to Italian law the Consumer Rights Directive (Directive 2011/83/EU and Legislative Decree No 21 of 2014) and the Private Enforcement Directive (Directive 2014/104/EU and

Legislative Decree No 3 of 2017). More recently, the Authority has worked on the ECN+ Directive, which strengthens the independence and powers of competition authorities and the role of the European network. The Directive should be adopted by the end of this year.

In recent years Italy has been a constant and productive presence in the ECN. Our contacts with the Commission have been almost daily at structure level and very frequent at senior management level. Achieving a stronger role for the Authority in Europe is one of the areas in which we have invested a great deal in terms of both resources and time, to win a role of recognised significance, relevance and credibility.

Market integration at the European level, and often also at the global level, means that the phenomena addressed by the Competition Authority are often transnational in nature. As a result, they require cooperation which, inevitably, occurs both between ECN authorities and in the global sphere. In this context, the International Competition Network is proving to be increasingly important because it fosters cooperation by authorities, enables greater convergence in their approach to problems, facilitates exchanges of models and best practices, and strengthens the legitimisation of individual national competition authorities.

This last is a challenge for all competition authorities at a historical period that sees strong forces hostile to market opening and in favour of economic protectionism. The task of the competition authorities is to safeguard market opening and economic integration, not on the basis of abstract pro-market ideologies but by demonstrating and providing evidence that their intervention helps ensure that the virtues of the markets are strengthened and enhanced and their vices suppressed. The aim is to achieve what Jean Tirole, in a recent book, defined as l'*Économie du Bien Commun*.

17. The challenges we have had to face in recent years have been highly complex. We have sought to address them to the best of our capabilities, with the hope that we have succeeded in contributing to the inclusive development of our country and in building ever-wider spaces of freedom that, however, must always go hand in hand with an equally vigorous safeguarding of equality.

Everything that we have done depends, first and foremost, on the utmost professionalism of the men and women of the Antitrust Authority, with whom I am proud to have worked over these last seven years and to whom I extend my heartfelt thanks for their commitment in performing their difficult tasks.

I also wish to express my gratitude to the Board of Auditors and the trade unions.

Roberto Chieppa was Secretary General of the Authority and his appointment as Secretary General of the Prime Minister's Office is a source of pride for us all. He will most certainly perform this role outstandingly well and help ensure that our institutions function better and more efficiently. His contribution to antitrust enforcement and to increasing the efficiency of our administrative structure was of vital importance, and words cannot express my intense gratitude to him.

Filippo Arena, the Head of Cabinet, a major expert in our subject area and a man of rare intelligence, ensures that the work of the institution continues to be conducted to the best possible effect. Vincenzo Valentini, Head of my Staff, performs a truly valuable role with great equilibrium, and manages each day to cope with my working rhythms. They have all been at my side, albeit performing different roles, over the years. I would like to extend my thanks – personal, not formal thanks – for everything they have done for the institution. A special "thank you" goes to my assistants and my secretary for their skill and dedication to the job in these last seven years.

A very warm thank you also to all the other institutions with which we have had such a fruitful dialogue over the years: the various branches of the Finance Police, who support us on a daily basis with great professionalism, dedication and sense of responsibility; the TAR of Lazio and the Council of State, whose decisions have been fundamental in guiding our activities; the Avvocatura dello Stato [state legal advisory service], which has never failed to provide an excellent service and excellent legal advice; the Public Prosecutor's Offices of Rome and Milan; the Court of Auditors, the other independent authorities, the DG Competition at the European Commission, and the antitrust authorities of the ECN and the ICN.

The lawyers of the antitrust community and the consumer protection associations have constantly spurred us to improve: their engagement is essential for the Authority to function to best effect.

In these seven years I have had the good fortune to be able to work with Board members whose impartiality, independence and expertise have been of central importance to the decisions to be agreed upon.

My truly heartfelt thanks, therefore, to Gabriella Muscolo and Michele Ainis, with whom I have spent the last seven years in a stimulating environment that provided invaluable input as to how

best to address the complex questions to be addressed and decided on.

My thanks also go to Carla Rabitti Bedogni, Piero Barucci, Salvatore Rebecchini and Antonio Pilati, with whom I worked in the early years of my presidency and of whom I have the warmest memories. I cannot finish without thanking the Presidents who preceded me – Antonio Catricalà, Giuseppe Tesauro, Giuliano Amato, Francesco Saja –, who handed down to me an institution that is a point of excellence and professionalism in which the country can take great pride. In turn, I am proud to hand to my successor an institution whose prestige will, I am sure, continue to grow in Italy and in Europe.

I also wish, once again, to thank the President of the Republic, Sergio Mattarella, for honouring us with his presence here today.

Lastly, my thanks to all of you for listening to me.