

ITALY

1. Changes to competition laws and policies

1. No changes to competition law or policy have been proposed or adopted during 2002.

2. Main interventions of the Antitrust Authority in 2001 and the first three months of 2002: a statistical overview

2. In applying Italy's antitrust law, in 2002 the Authority evaluated 651 concentrations, 46 agreements and 19 possible abuses of dominant positions.

The Authority's activity			
	2001	2002	January-March 2003
Agreements	43	46	17
Abuses of dominant positions	28	19	4
Concentrations	616	651	149
Fact-finding inquiries	1	-	-
Non-compliance with orders	2	3	-
Opinions submitted to the Bank of Italy	29	28	13
Football rights (Law No. 78/99)	-	1	-

Distribution of proceedings concluded in 2002 by type and outcome

	No violation of the law	Violation of the law, conditional authorization or compliance following changes to agreements	Cases beyond the scope of the Authority's powers or to which the law was not applicable	Total
Agreements	41	5		46
Abuses of dominant positions	15	4		19
Concentrations	597	7(*)	47	651

(*) Includes one case of withdrawal of notification following the start of investigation by the Authority.

3. As regards the investigations of agreements between firms, the Authority concluded seven inquiries in 2002¹. In three cases it found that the prohibition of agreements restricting competition of

1 Selea-Chemists' association; Nokia Italia-Marconi mobile-Ote; Airlines-Fuel Charge; Poste italiane-S.D.A. Express Courier-Bartolini-Consorzio logistica pacchi; Credit cards; Pellegrini-Consip; sale of television rights. The following cases, the investigations into which were concluded in the first quarter of 2002, have already been described in last year's Annual Report: Selea-Chemists' association; Nokia Italia-Marconi mobile-Ote.

COMPETITION LAW AND POLICY IN ITALY

Article 2 of Law no. 287/90 had been violated and imposed fines totalling approximately €36 million². In two cases the Authority granted exemptions to the prohibition of agreements pursuant to Article 4 of Law no. 287/90³. Two inquiries concluded with a finding of non violation of the prohibition⁴. In the first three months of 2003 the Authority concluded three inquiries concerning agreements⁵. In two cases it found that Article 2 of Law no. 287/90 had been violated and imposed fines amounting to about €542,000⁶ and €70⁷ million.

4. Turning to abuses of dominant positions, in most of the cases examined for possible violations of the law the Authority was able to exclude the existence of abusive conduct without opening a formal investigation. It concluded four investigations in 2002⁸. In two cases the conduct was deemed to violate Article 3 of Law no. 287/90⁹: in the first one a fine of approximately €2.3 million was imposed. In the other two investigations it was found that Article 82 of the EC Treaty had been violated¹⁰ and fines were imposed, respectively of about €7.5 million in the first case and €1,000 in the second.

5. In 2002 the Authority examined the largest number of concentrations since the entry into force of Law no. 287/90. The number of cases investigated during the year totalled 651. In 603 cases the Authority made a formal ruling pursuant to Article 6 of Law no. 287/90, while in 45 cases it concluded that there were no grounds for further proceedings; two cases were referred to the European Commission and in one case the parties withdrew the notification of the proposed concentration. In eleven cases the Authority conducted a formal investigation. In three cases the Authority prohibited the concentration since it was deemed likely to create or strengthen a dominant position that would have caused a substantial and lasting reduction in competition¹¹. In one case the parties formally withdrew the notification of the proposed concentration in view of the preliminary results of the investigation¹². In two cases the Authority authorized the concentration¹³ while in the other three it authorized the operation after the parties had undertaken to adopt specific corrective measures¹⁴. Finally, in one case the Authority referred the notified operation to the European Commission since it came within the scope of Regulation 4064/89/EC¹⁵ and in

2 Selea-Chemists' association; Airlines-Fuel Charge; Pellegrini-Consip.

3 Nokia Italia-Marconi mobile-Ote; Sale of television rights.

4 Poste italiane-S.D.A. Express Courier-Bartolini-Consorzio logistica Pacchi; Credit cards.

5 Local public transport companies-petrol companies; Sagit-Contracts for the sale and distribution of ice-cream and changes in the prices of some brands of tobacco.

6 Local public transport companies-petrol companies.

7 Local public transport companies-petrol companies.

8 Diano-Tourist Ferry Boat-Caronte Shipping-Navigazione generale italiana; O.N.I. and others-Cantieri del Mediterraneo; International mail express Italy-Poste italiane; Blugas-Snam.

9 Diano-Tourist Ferry Boat-Caronte Shipping-Navigazione generale italiana; O.N.I. and others-Cantieri del Mediterraneo.

10 International mail express Italy-Poste italiane and Blugas-Snam.

11 Sita-Viaggi e turismo Marozzi; Autogrill-Ristop; Autogrill-Ristop.

12 Lottomatica-Toto2000-Betting Service-Division of Eis-Elettronica ingegneria sistemi.

13 Enel-France-Telecom-New Wind; Banca di Roma-Bipop-Carire.

14 Canal plus Group-Stream; Società esercizi Commerciali Industriali-S.E.C.I.-Co.Pro.B-Finbieticola-Eridania; SAI-Società assicuratrice Industriale-La Fondiaria assicurazioni.

15 Physical person-Finiper-Carrefour Italia-GS.

COMPETITION LAW AND POLICY IN ITALY

another it decided that there were no grounds for further proceedings¹⁶. In the first three months of 2003 the Authority examined another 149 concentrations and carried out an investigation, during which the parties withdrew the notification of the proposed concentration¹⁷.

6. During the year the Authority concluded two investigations for failure to comply with the measures laid down as the condition for the authorization of concentrations¹⁸. In one of these cases it found that Article 19.1 of Law no. 287/90 had been violated and imposed a fine of about €15.8 million¹⁹. The Authority also imposed a fine of €2 million for failure to comply with an order to eliminate the violations ascertained²⁰.

7. The Authority submitted 30 reports pursuant to Articles 21 and 22 of Law no. 287/90, concerning restrictions of competition arising from existing or proposed laws or regulations; 24 of the reports were submitted in 2002 and six in the first three months of 2003. As in the past, the reports covered a wide range of economic sectors.

Competition advocacy reports and opinions by sector of economic activity January 2002 -March 2003
(number of interventions)

Sector	2002	January-March 2003
Electricity, water and gas	3	
Food products and beverages	1	
Pharmaceuticals	1	
Transport and renting of transport equipment	3	2
Radio and television	1	
Telecommunications	8	
Insurance and pension funds	1	
Financial services	1	
Postal services		1
Professional and entrepreneurial activities	2	
Leisure, cultural activities and sports		2
Sundry services	2	
Miscellaneous	1	1
Total	24	6

16 SAI-Società assicuratrice industriale-La Fondiaria assicurazioni.

17 Telecom Italia-Division of Pagine Italia.

18 Edizione Holding-Autostrade concessione e costruzione autostrade; Seat pagine gialle-Cecchi Gori communications.

19 Edizione Holding-Autostrade concessione e costruzione autostrade.

20 Assoviaggi-Alitalia.

AGRICULTURE AND MANUFACTURING

1. Agricultural and food products

Sagit-Contracts for the sale and distribution of ice-cream

8. In January 2003 the Authority concluded the examination of a model contract submitted by Sagit Spa pursuant to Article 13 of Law no. 287/90, concerning the distribution and sale of ice-cream in outlets belonging to the so-called *horeca* channel (hotel, restaurant and catering). The model contract submitted by Sagit had an exclusivity clause requiring the outlet to purchase only from the manufacturer. Since the same model contract was to be used by the other main industrial ice-cream manufacturers in Italy – Nestlé Italiana Spa, Sammontana Srl and Gelati Sanson Spa – the Authority decided to extend the inquiry to those companies in order to assess the overall effects of the contracts on competition in the domestic market for industrial ice-cream production and sale.

9. The inquiry found that the industrial ice-cream distribution contracts contained three different exclusivity clauses: wholesaler-distributor sole agency, outlet exclusivity and freezer exclusivity. Regarding the wholesaler-distributor sole agency, the Authority deemed that the purpose of the clause was to establish strong ties between producer and distributor, ensuring that the latter would have make all efforts to further the manufacturer's commercial policies. The clause did not appear to constitute an obstacle to the entry of new competitors in the market, in view of the large number of wholesalers already present in the frozen goods sector. Regarding freezer exclusivity, the Authority found that this did not, in itself, rule out the possibility of installing two freezers in the same outlet, a tendency that had increased rapidly in recent years as technological advances led to smaller-sized freezers.

10. By contrast, the greatest problems were raised by the exclusivity contracts with the individual outlets, whereby the latter were obliged to distribute only one manufacturer's ice-cream. However, during the investigation it emerged that a large part of the distribution network (around 43% of all outlets) was not bound by exclusivity clauses and therefore continued to be largely free and open to new entrants. In view of this and of Sagit's undertaking not to raise the number of outlets bound by exclusivity contracts to more than 50% of all those supplied, the Authority deemed that the contract submitted by Sagit would not restrict competition under the terms of Article 2 of Law no. 287/90. Moreover, since a large proportion of outlets were basically not subject to restrictions, the Authority deemed that the application of exclusivity contracts by Sagit, Nestlé, Sammontana and Sanson would not have resulted in a cumulative block effect on the market in violation of Article 81 of the EC Treaty and that it would therefore not be necessary to withdraw the benefit of the block exemption, granted under of Regulation 2790/99/EC, to Nestlé, Sammontana and Sanson on the basis of their market shares, which amounted to less than 30%.

Changes in the prices of certain brands of tobacco

11. In March 2003, the Authority concluded an investigation into the companies operating in the Italian cigarette market. It found that a horizontal agreement restricting competition had existed from 1993 up to 2001 between the two main operators, the Philip Morris group and Amministrazione Autonoma dei Monopoli di Stato, which was taken over in 1999 by Ente Tabacchi Italiani Spa (ETI). In particular, the inquiry found that for a long time (since 1993) Philip Morris and Amministrazione Autonoma dei Monopoli di Stato/ETI had been bound by a licence contract, under which first Amministrazione Autonoma dei Monopoli di Stato then ETI had manufactured and sold cigarettes under Philip Morris brands (*Marlboro, Diana, Muratti* and *Mercedes*). Within this framework, the two companies had entered into wide-ranging agreements to harmonize their conducts, thus altering the competition regarding cigarette prices, limiting the inclusion of new brands in the official price register and basically preserving

an artificial stability of the market in violation of Article 2 of Law no. 287/90. Specifically, in the period concerned, Philip Morris and Amministrazione Autonoma dei Monopoli di Stato/ETI had increased prices simultaneously and homogeneously, thus successfully maintaining their combined market share of around 90%.

12. The agreement between Philip Morris and Amministrazione Autonoma dei Monopoli di Stato/ETI was also directed against other tobacco companies since it led to increases in the prices of competitors' cigarettes and restricted the possibility of introducing competitively priced brands on the market. To carry out this common strategy the two companies exploited the special position occupied by Amministrazione Autonoma dei Monopoli di Stato as manufacturer, wholesaler under a *de facto* monopoly and government agency responsible for processing entries in the official price register²¹.

13. The Authority deemed that the pricing practices of companies other than Philip Morris and Amministrazione Autonoma dei Monopoli di Stato/ETI were not part of the overall restrictive agreement since for a long time their conduct had been strongly conditioned by pressures from Amministrazione Autonoma dei Monopoli di Stato/ETI to prevent them engaging in competitive behaviour. In view of the seriousness of the violations, the Authority imposed fines on five companies of the Philip Morris group totalling €50 million and a fine on Ente Tabacchi Italiani of €20 million.

Società esercizi commerciali industriali-S.E.C.I.-Co.Pro.B.-Finbieticola-Eridania

14. In August 2002 the Authority authorized, subject to the parties' compliance with some measures, the purchase of 100% of the share capital of Eridania Spa, which manufactures and sells beet-sugar, by three companies operating in the same sector – Società Esercizi Commerciali Industriali-S.E.C.I. Spa (and its division Sadam Zuccherifici Spa), Coprob Scrl and Finbieticola Spa. In particular, the operation was to take place in two stages: first, Sacofin Spa, a joint venture of Seci/Sadam, Coprob and Finbieticola, was to acquire the whole share capital of Eridania; then, within 18/24 months at most, Sacofin was to be divided among the parties. The inquiry had been opened to assess whether the operation as a whole would have resulted in a collective dominant position held by Seci/Sadam and Coprob/Finbieticola in the Italian sugar market and in the upstream markets for the supply of sugar-beet and the distribution of seed.

15. Regarding the effects of the operation as originally notified, the Authority deemed it would have entailed a radical change in the structure of Italy's sugar industry, causing a reduction in the number of firms, the disappearance of the main operator and simultaneously the strengthening of the two small companies, Sadam and Coprob. As a result of the operation, the last two would have gained the leadership of the market, with shares of around 35% (Sadam) and 39% (Coprob), and would have benefited from vertical links on the supply side through Finbieticola's stake in the capital of some companies of the Sadam group.

16. The Authority noted that even before the concentration the market was characterized by: a high degree of concentration, a significant homogeneity of products and production costs, generally stable demand and substantially transparent prices and production (production was known because of the quota system while sales were affected by the small number of producers – five in all – and consumers – basically the main confectionery manufacturers and large retailers). Therefore, in such a market, even before the concentration the manufacturers had been able, albeit with a small degree of uncertainty, to observe their competitors' practices, predict their reactions and consequently adapt their own strategies. However, any tacit coordination this entailed had been neither certain nor stable. Above all, the substantial

21 Before cigarettes and other tobacco products can be sold in Italy they must be entered, by decree, in the official price register pursuant to Article 1, Law no. 825 of 13 July 1965.

COMPETITION LAW AND POLICY IN ITALY

asymmetry of the manufacturers' quotas and the lack of structural links between them had been no guarantee of lasting parallel practices.

17. The notified operation would have brought about substantial changes in the existing structure of competition by allowing the parties to maintain parallel practices on a stable basis. In fact, after the concentration there would have been two operators with almost perfectly symmetrical market shares, jointly accounting for about $\frac{3}{4}$ of national output. Moreover, the fact that for 18/24 months – equivalent to two sugar harvests – the parties would have managed jointly Eridania's activities, could have made it easier for them to pursue a unified market strategy even after the interests acquired had been divided up.

18. During the proceedings the parties expressed the intention to adopt several measures that would have eliminated the competition-distorting effects. In particular, these included: *i*) reducing the period of joint management of the newly acquired company to just over six months; *ii*) selling the sugar-beet seed distribution activities of Eridania, Sadam and Coprob; *iii*) undertaking to supply an independent trader, having sufficient financial resources and experience to qualify as an active competitor in the Italian market, with a quantity of sugar at below-market prices if the volume of Italy's sugar imports should fall below a given threshold. The Authority deemed that these measures would have been sufficient to remove the risk of a collective dominant position that would have substantially and permanently restricted competition in the markets concerned.

Report on the regulations on bread-making

19. In November 2002, the Authority sent Parliament and the Government a report, pursuant to Article 21 of Law no. 287/90, on the regulations relating to bread-making in the province of Rome. In particular, the regulations fixed a quota for the number of bakeries allowed to operate in the province based on pre-established criteria, such as the density of existing bakeries, the volume of production and the presumed amount of bread required.

20. As it had already made clear on numerous other occasions, the Authority stressed that, unless there were justifiable general grounds for doing so, the use of regulations to limit the number of firms authorized to operate distort competition, creating unjustified positions of advantage for existing businesses and discouraging them from improving the conditions of supply. The Authority also noted that in the case in question there appeared to be no reason to believe that the elimination of that kind of regulations would have resulted in market structure incapable of satisfying demand. On the contrary, removing quantitative limits on entry would lead to a better structure of supply and, in the end, better satisfaction of final consumers' needs.

2. Pharmaceuticals

Report on the duration of supplementary patent coverage for pharmaceuticals

21. In May 2002 the Authority reported on the potential competition-distorting effects of a bill that extended the duration of the supplementary patent coverage for several hundred pharmaceuticals.

22. In the report the Authority pointed out that the proposed extension of the supplementary patent coverage would distort competition in three main ways: *i*) by preventing the development of the market for generic drugs in Italy, that it was already much smaller than in the other European countries; *ii*) by keeping prices higher because of the lack of a competition caused by the existence, in Italy alone, of a system of patent coverage for a large number of products; *iii*) by restricting the growth of the basic chemical industry since the patent extension would not allow firms to manufacture patented molecules even for export to countries where the patent had expired.

ELECTRICITY AND NATURAL GAS**1. Electricity*****Enel-France telecom-New Wind***

23. In February 2001 the Authority had authorized Enel Spa and France Télécom SA to acquire joint control of Infostrada Spa, subject to compliance with some measures. The measures included the sale by Enel of at least 5,500 MW of its generating capacity, in compliance with a number of requirements as to substance and timing. Subsequently, Enel brought an appeal against the Authority's decision before the Regional Administrative Court of Lazio, which upheld the appeal, ordering the cancellation of the Authority's decision. The Authority, in turn, appealed against that Court's ruling before the State Council, which deemed the first-level appeal to be justified on only one count, that is, the measure issued by the Authority requiring Enel to sell part of its generating capacity and ordered the elimination of that part of the contested measure. Consequently, in October 2002 the Authority decided to open a new investigation into the same matters involving Enel, France Télécom and Wind, since in the lapse of time between the Authority's first decision and the start of the new investigation Infostrada had been merged into Wind.

24. The new inquiry brought to light several new circumstances. In particular, under Enel's latest strategic plans, the group's objective to supply combined electricity and telecommunications services to eligible customers would not be taken further. Specifically, the new plan indicated Enel's intention to regard the purchase of Wind as nothing more than a financial investment, with no design for further operational integration. The inquiry also pointed out that the assumed synergy between electricity supply and telecommunications services was very limited, as borne out by the experience of Enel's main competitors in the electricity sector who had diversified into telecommunications in recent years. The Authority therefore concluded that the measures set out in the authorization of February 2001 were no longer necessary and therefore the purchase of Infostrada was not deemed likely to strengthen Enel's dominant position in the market for the supply of electricity to eligible customers.

Report on licences for the exploitation of large diversions for hydro-electric power

25. In March 2002 the Authority sent Parliament and the Government a report, pursuant to Article 21 of Law no. 287/90, on the competition-distorting effects of regulations, adopted by Trentino-Alto Adige Region, concerning licences for the exploitation of large diversions for hydro-electric power. In particular, under the regulations, the selection system for the licensee of large diversions for hydro-electric power, allowed preference to be given to companies controlled by the Province or other local authorities. In fact, the provisions stated that the competent Province could, after the evaluation of tenders, assign the licence to such companies and pass on to them, free of charge, the work plans and management programmes submitted by the winner, on condition that they undertook to carry out a programme of similar or improved content. The Authority deemed that the requirements, by unjustifiably favouring companies controlled by the Province or other local authorities, were likely to prevent any form of competition and dissuade private firms from submitting tenders.

2. Natural gas***Blugas-Snam***

26. In November 2002 the Authority concluded an investigation, pursuant to Article 82 of the EC Treaty, regarding certain competition-restricting practices adopted by Snam Spa and Snam Rete Gas Spa in the assignment of transport capacity to entry points in the national network of gas pipelines in the period

COMPETITION LAW AND POLICY IN ITALY

2001-2002. During the investigation Snam merged into its controlling company, Eni Spa (becoming Eni Divisione Gas Power, EDGP), so that the investigation continued in respect of the new entity.

27. Eni and Snam Rete Gas held a dominant position in the markets, respectively, for the sale and for the transport of natural gas. In particular, Snam Rete Gas had a dominant position in the national network of natural gas pipelines, of which it controlled about 97%. Eni had a dominant position in the Italian market for sales of natural gas, having sold about 84% of all gas consumed in Italy in 2001.

28. Regarding the assignment of transport capacity in the pipelines at import entry points in 2001-2002, the Authority deemed that EDGP had abused its dominant position in the market for the sale of natural gas, impeding the entry of competitors. In particular, the inquiry found two separate practices adopted by the company having close functional connections. In the first place the Authority found that the way in which EDGP had implemented Article 19 of Legislative Decree no. 164/00²², which required Eni to reduce progressively, from 1 January 2002, the supply of consumer gas in Italy, constituted an abusive conduct. In fact, EDGP had sold abroad, to some Italian companies (Plurigas, Dalmine Energie, Edison and Cir Energia), sufficient quantities of gas to guarantee coverage until 2007 of the whole of the remaining third-party quota fixed by the decree. In the second place, EDGP had sold its transportation rights to its own customers-competitors, guaranteeing them a priority long-term access to the national network, to the detriment of other independent operators. By these practices EDGP had therefore prevented natural gas importers, who did not rely on Eni for provisioning, from putting natural gas for sale on the Italian market in the years 2001-2002. As a consequence, by far the largest percentage of gas transported on the national network and sold in the country was either directly or indirectly originally owned by the company, thereby vanishing the purpose of Article 19 of Legislative Decree no. 164/00, which was to ensure conditions of plurality of supply, in place of Eni's previous *de facto* monopoly, by imposing limits on the gas brought in by the dominant operator.

29. In addition to imposing a symbolic fine of €1000, the Authority ordered Eni to produce, within 90 days of the close of the inquiry, a report detailing the measures it intended to take to terminate the effects of its abusive practices, in particular the steps to improve the transportation pipelines in order foster the entry of new independent operators on the Italian market.

Report on new re-gasification capacity for LNG terminals

30. In April 2002, at the request of the Electricity and Gas Authority, the Antitrust Authority issued an opinion, pursuant to Article 22 of Law no. 287/90, on the Electricity and Gas Authority's consultative report concerning the rules for the granting of new re-gasification capacity for liquefied natural gas terminals (LNG).

31. The Antitrust Authority held the view that the installation of new LNG re-gasification terminals represented an important opportunity to reduce existing entry barriers and also offered an opportunity for geographically diversifying the sources of natural gas supplies. In this respect, the Authority agreed with the findings of the Electricity and Gas Authority that it was necessary to make an exception to the system of regulated access instituted by Legislative Decree no. 164/00, allowing the majority of the new re-gasification capacity of the new LNG terminals to be reserved to the terminal owner and only a residual part to be subject to compulsory third-party access at regulated conditions. Moreover, in order to balance the legitimate need to safeguard the investment of the firms building the new LNG terminals with the objective of promoting competition in the natural gas market, the Authority agreed that the quota of new

22 Legislative Decree no. 164 of 23 May 2000 transposed Directive 98/30/EC containing common rules for the internal natural gas market. In particular, Article 19 fixes two temporary ceilings on the amount of gas sold to final customers and on the amount issued into the national network by a single operator.

re-gasification capacity initially set aside for the terminal owner should be gradually reduced so as to reflect the parallel, gradual elimination of the exceptional lack of market entry capacity not controlled by the incumbent.

TRANSPORT

1. Air transport and airport services

Airlines - Fuel charge

32. In August 2002 the Authority concluded an inquiry, pursuant to Article 2 of Law no. 287/90, into Alitalia Linee Aeree Italiane Spa, Meridiana Spa, Alpi Eagles Spa, Air Europe Spa, Volare Airlines Spa and Air One Spa, concerning the simultaneous application by some airlines of an equal supplementary charge (the so-called fuel surcharge) on all domestic routes. In June 2000, Alitalia, followed by the other airlines, had introduced a surcharge of Lit. 10,000 (approximately €5) on passenger flights on all domestic routes, which it had justified on the basis of the increase in the cost of aircraft fuel. In August 2000 Alitalia had announced that the surcharge would be raised to Lit. 24,000 (approximately €12) from 1 September 2000; an equal increase had also been introduced by the other airlines.

33. Regarding the competitors' policy of falling into line with the content of announcements made by the leader, Alitalia, the Authority noted that the business practice of announcing price increases beforehand had to be deemed equivalent to engaging in an indirect exchange of information since it allowed other companies to observe the reciprocal reactions on the various markets and to adapt accordingly. This practice was likely to reduce the firms' reciprocal uncertainty regarding future behaviour and hence the risk normally inherent in any unilateral change of practice by market operators.

34. The Authority deemed that since the agreed practice was designed to coordinate the respective price strategies of companies operating at the same level of the production chain it constituted one of the most serious forms of restriction of competition. The seriousness of this anti-competitive practice also stemmed from the fact that the agreed application of the fuel surcharge by the companies participating in the collusion had been followed by a corresponding increase in the price of air transport by other airlines. The rise in prices resulting from the agreement had thus become a focal point towards which other operators not party to the agreement were induced to converge as a result of normal oligopolistic market dynamics.

35. Although the agreement constituted a serious violation, the Authority decided to impose a modest fine in view of the difficulties faced by the market at the time the surcharge had been introduced as a result of the sudden, large increase in aircraft fuel costs and the structural crisis that had overtaken the whole air transport sector after 11 September. In view of this circumstance and of the different roles of the airlines in the agreement, the Authority ordered a fine of €1,852,052 to be paid by Alitalia, €86,401 by Meridiana, €19,470 by Alpi Eagles, €35,161 by Air One, €62,711 by Air Europe and €52,687 by Volare Airlines.

Report on the distribution of air traffic over Milan's airport system

36. In March 2003 the Authority, pursuant to Article 22 of Law no. 287/90, sent the Ministry for Infrastructure and Transport a report on the application of the rules for the allocation of time bands for flights to and from Milan Linate airport.

37. The Authority stressed the need for the competent authorities to allocate the time bands according to criteria of proportionality and non-discriminatory. In particular, the Authority noted that the interpretation given by Assoclearance – the body in charge of coordinating time-band allocation in Italian airports – to the effect that the time bands were to be allocated to the single airline even if part of a same group, was likely to give an unfair advantage to some airlines and be detrimental to others. In fact, according to that interpretation, the airlines belonging to a group of companies would have been able to obtain a larger number of time bands. The Authority noted that Assoclearance's interpretation also conflicted with the principles set out in the decisions the Court of Justice regarding the notion of undertaking, which, in the context of competition law, referred to each entity in an economic sense, even though from a legal point of view it formally consisted of more than one legal or natural person.

2. Road transport

Sita-Viaggi e turismo Marozzi

38. In July 2002 the Authority concluded an investigation into a concentration in which Sita Spa, part of the Ferrovie dello Stato group, principally engaged in the provision of local town and country public bus services in the Veneto, Tuscany, Lazio, Campania, Basilicata and Puglia regions, would have acquired exclusive control of Viaggi e Turismo Marozzi Srl. The latter company mainly provided long-distance passenger bus services, running regional bus lines under a state licence over the routes Puglia-Lazio, Puglia-Tuscany and Basilicata-Tuscany. According to the notification, SITA, which already held 49% of Marozzi, intended to acquire the remaining 51%.

39. Regarding the public transport of passengers and luggage by train and coach, the Authority separated the sector into inter-regional transport, covering medium and long-distance services between at least three regions, and local public transport. The Authority attributed importance to the fact that, in terms of demand, the individual routes were generally not interchangeable and therefore each represented a separate relevant market. Within those markets, rail and road transport were interchangeable because, over each of the routes concerned, the total journey undertaken by the train and the coach was very similar and most of the stops were the same, at least in the case of some types of train.

40. In examining the effects of the operation the Authority found that, within the context of inter-regional transport, the notified concentration would have caused the public coach service run by Marozzi to overlap with the train service provided by Trenitalia on ten of the twelve routes affected by the operation. In particular, the concentration would have eliminated all effective competition over those routes because Ferrovie dello Stato would have achieved a 100% market share of passengers. The Authority also deemed that the competition-restricting effect of the operation would have spread to the broader context of the whole network of connections covering the routes concerned. Specifically, on the routes Tuscany-Puglia and Tuscany-Basilicata, also other firms, apart from Marozzi, were operating but they only ran a few services per week, mostly at the weekends or in certain periods of the year (unlike Marozzi, which offered daily services throughout the year). On the Lazio-Puglia route, the one most affected by the operation as it included most of the lines where the services of the two operators would overlap (7 of the 10 routes in question), by acquiring Marozzi, Ferrovie dello Stato would have achieved a share of about 97%. In local public transport as well the operation would have entailed considerable

overlapping on the Rome-Avellino route and was therefore likely to confer to Ferrovie dello Stato a dominant position on that market.

41. During the inquiry the parties drew up a series of undertakings concerning merely behavioural aspects, which were deemed insufficient to avoid the competition-restricting effects of the operation. Therefore, the Authority decided to prohibit the concentration.

3. Shipping and auxiliary transport services

Diano-Tourist ferry boat-Caronte shipping-Navigazione generale italiana

42. In April 2002 the Authority concluded an investigation into the companies Tourist Ferry Boat Spa, Caronte Spa and Navigazione Generale Italiana Spa for abuse of a dominant position in the car-ferry service across the Straits of Messina. In particular, until August 1998 the ferry service across the Straits only had covered the route Villa S.Giovanni-Messina and had been run by Ferrovie dello Stato, Tourist and Caronte, which had been operating in the market for more than 30 years. After Diano had begun to serve the Reggio Calabria-Messina route, the companies Tourist and Caronte, which constituted a single economic entity owing to the links between them, started to work the same route through their subsidiary, Navigazione Generale Italiana (NGI), at fares that were about 50% lower than those applied on the shorter Villa S.Giovanni-Messina route.

43. The Tourist-Caronte group held a dominant position in the market for car-ferry services (private and commercial vehicles) across the Straits of Messina, with a share of approximately 80%, almost all relating to the main Villa S. Giovanni-Messina route. In fact, that route accounted for around 90% of the whole market and was difficult to contend because of high administrative and infrastructural barriers preventing access by new operators. On the other route, Reggio Calabria-Messina, the Tourist-Caronte group, through its subsidiary NGI, held a 47% share. The group was the only operator working both routes. The newcomer Diano only operated the Reggio Calabria-Messina route (with a share of just over 50%, corresponding to about 4% of the whole market).

44. In order to assess whether the fares applied by the Tourist-Caronte group on the Reggio Calabria-Messina route were predatory, the Authority conducted a complex analysis of incremental costs, that is, the costs specifically incurred by the group for the additional production of goods and services. It emerged from the analysis that the revenue from the ferry service on the Reggio Calabria-Messina route had not been sufficient, in 1999 and 2000, to cover either the long-term or the medium-term incremental costs.

45. In addition to the incremental costs, the Authority also took into consideration two further elements that allowed it to define the strategy adopted by Tourist-Caronte as predatory: the company's ability to recover the costs incurred during the initial period and the strategy aimed at overlapping departure times. Regarding the first element, the Authority noted that the revenue obtained on the main route, which was not contestable at the time, allowed the dominant operator to fix prices below even the short-term average incremental costs on the Reggio Calabria-Messina route while still obtaining a highly satisfactory overall result over the whole market. Moreover, the exclusionary nature of the group's strategy was confirmed by the systematic overlapping of timetables with those of Diano at the time the service was launched on the Reggio Calabria-Messina route and later, in response to changes in Diano's departure times, by the introduction of timetables designed to overlap or anticipate by a few minutes those of its competitor.

46. The Authority deemed that the practices adopted by the Tourist-Caronte group represented a serious violation of Article 3 of Law no. 287/90 insofar as they were likely to impede the development of actual and potential competition in the ferry service across the Straits of Messina, and imposed a fine

COMPETITION LAW AND POLICY IN ITALY

amounting to 4.5% of the turnover of Tourist, Caronte and NGI from the car-ferry service across the Straits of Messina, corresponding to approximately €2 million.

O.N.I. and others-Cantieri del Mediterraneo

47. In November 2002, the Authority concluded an investigation, pursuant to Article 3 of Law no. 287/90, into Cantieri del Mediterraneo Spa (Camed) for abusive practices regarding the availability of dry docks in the harbour of Naples.

48. Camed was found to hold a dominant position as responsible for managing the only four dry docks in the harbour of Naples accessible to Neapolitan refitters without their own dock. The investigation revealed that the way in which Camed effectively managed the dry docks had led to a lack of transparency in their exact availability that unjustifiably prevented access by other refitting firms operating in the harbour of Naples. In particular, three of the docks in question were public property and were managed by Camed under a licence that entailed a set of obligations, including: the obligation to ensure an equal treatment for different firms requesting to use the docks, which excluded any prerogative on the part of Camed to use the infrastructure over other firms, and the obligation to adopt an information system that would allow all interested to know the exact availability of the dry docks.

49. The Authority found that, regardless of these requirements, Camed had adopted an information system about the availability of the dry docks that was inadequate to ensure sufficient transparency and that unjustifiably limited access by other Neapolitan refitters. Consequently, the other Neapolitan firms had been prevented from knowing the dates on which the docks would have been available in order to plan their work satisfactorily, although that information was essential for presenting bids for tenders by ship-owners. On the other hand, Camed, as manager of the dry docks, knew the effective, overall availability of the docks it managed and thus obtained unfair advantages over the other refitters operating in the harbour of Naples. The damage inflicted by Camed's practices was illustrated by the fact that the company had acquired almost all contracts for dry dock refitting in the harbour of Naples (91% from 1996 to 2000). The Authority therefore deemed that the practices engaged in by Camed constituted a violation of Article 3 of Law no. 287/90 by preventing or unjustifiably limiting access to the dry docks it managed by other refitting firms in the harbour of Naples.

Report on the rules governing the management of dry docks in the harbour of Naples

50. In December 2002 the Authority, pursuant to Article 21 of Law no. 287/90, sent Parliament and the Government a report on the rules relating to the management of dry docks in the harbour of Naples. In particular, the Authority noted that the failure to include among the persons entitled to demand a ship's entry into the dock not only "Captains, Ship-owners and Ship's Agents" but also "other interested persons", may have given rise to a narrow interpretation, whereby ships' refitters might no longer be directly entitled to apply for the entry of ships into the docks managed by Camed. In regard, the Authority pointed out that full access to the docks would allow several refitters to compete for contracts, with obvious advantages for ship-owners through the increased supply of services.

Report on compulsory rates for fees payable to ship's agents

51. In February 2003 the Authority sent Parliament and the Government a report, pursuant to Article 21 of Law no. 287/90, on the rules governing rates for ship's agents. In particular, the rules required the adoption, by decree of the Minister for Infrastructure and Transport, of compulsory minimum and maximum rates for fees payable to ship's agents for their services. The Authority pointed out, as it had already done on numerous other occasions, that to provide by law for administrative rate-setting

mechanisms would be likely to entail unjustifiable restrictions on competition and was therefore not an appropriate means of ensuring the supply of sufficiently good quality services.

TELECOMMUNICATIONS

Telecom Italia-Division of Pagine Italia

52. In January 2003 the Authority concluded an investigation into the acquisition by Telecom Italia Spa of Pagine Utili, a division of Pagine Italia Spa, with a decision that there were no grounds for further proceedings following the withdrawal of the notification of the concentration. The investigation had begun in December 2002 to assess whether the concentration would strengthen Telecom Italia's dominant position in the domestic market for advertising space in trade and telephone directories. As a result of the operation, the Telecom Italia group, which already held a dominant position in the market, would have taken over the second largest operator and only company capable of competing with it on a country-wide basis. In fact, apart from these two, the only other operators in the field were small local firms, holding negligible shares of the market. In view of the Authority's objections, the parties withdrew the notification of the operation and therefore the Authority closed the proceeding.

Report on the implementation of Community directives in the telecommunications sector

53. In July 2002 the Authority presented a report, pursuant to Article 22 of Law no. 287/90, on a draft decree of the Ministry of Communications containing some amendments to the provisions regulating the duration of individual licences in the telecommunications sector. In particular, the draft decree contained provisions extending the duration of individual licences from fifteen to twenty years, with retroactive effect in respect of licences already issued on the date of the decree's entry into force.

54. In the report the Authority pointed out that although Community regulations on the matter (Article 8.4, Directive 97/13/EC, the so-called "licensing directive") allowed individual member States to modify the conditions applying to an individual licence, the changes could only be made in objectively justifiable cases and in a proportional manner. In this regard, the Authority stressed that the proposed amendment would produce different effects in the case of fixed telephony and of mobile services. With regard to fixed telephony, the Authority pointed out that extending the licences would not have reduced the possibility of entry by other operators since the issue of additional licences was not affected by a shortage of resources. In contrast, in the case of mobile telephony services, the proposed amendment would have been likely to jeopardize the reliability of the system of rules governing tenders. Indeed, when there was a shortage of available frequencies, as in the case of mobile services, and these were assigned by tender, a change in licence duration altered the current value of the frequencies and hence one of the fundamental conditions on which the tenders were based.

RADIO, TELEVISION AND PUBLISHING RIGHTS

Sale of television rights

55. In March 2002 the Italian football association applied to the Authority, under the terms of Article 4 of Law no. 287/90, for an extension of the exemption granted in July 1999 for the collective sale of rights relating to the Coppa Italia football matches to include the 2002-2005 seasons. This application was examined assuming the relevant market to be that for premium sports television rights (1st and 2nd division championship, Coppa Italia, UEFA Cup, Champions League, matches played by the Italian national football team, the Formula 1 world championship and the Giro d'Italia). Specifically, the Authority noted that there were some televised sports events which, since they had the ability to attract large audiences and were highly interchangeable, actually belonged to a separate product market compared with other, less important sports events and films.

56. The Authority therefore deemed that since the aim of the collective sale of rights of Coppa Italia matches was to fix common contractual and financial conditions for the sale of broadcasting rights by the individual teams, it could restrict competition.

57. Regarding the decision whether the requirements had been fulfilled for the issue of the exemption pursuant to Article 4 of Law no. 287/90, the Authority deemed that, regarding the condition to improve supply, the collective sale of rights would help to reduce transaction costs in view of the specific nature of the Coppa Italia championship, which involved a large number of participants (48 teams) with varying levels of play and used the direct elimination system. The improvement in supply would have benefited the television broadcasting companies, which represent the demand side in the market for sports rights, as the lower transaction costs and reduced uncertainty would have enabled them to plan their playlists better. Consequently, by improving the conditions of supply to broadcasters, the agreement in question was deemed likely to increase the number of matches they programmed, to the benefit of viewers. Moreover, the agreement between the football clubs would not have eliminated competition for a large part of the market as other premium sports television rights sold by other operators were available to the purchasers. On these grounds the Authority authorized for a period of three years the collective sale by the Italian football association of Coppa Italia television rights, exclusively relating to the direct elimination rounds.

Canal Plus Group -Stream

58. In May 2002 the Authority authorized, subject to compliance with certain conditions, the concentration in which the Canal+ group would have purchased Stream Spa. The purchaser, the Canal+ group, was a multinational company with a significant degree of vertical integration since it operated in the upstream market for the production and distribution of cinema film and audiovisual products and in the downstream market for pay-TV services in several European countries. In Italy, the Canal+ group operated through its subsidiary Telepiù Spa, which has operated as a pay-TV broadcaster since 1991. The company Stream, which operated in the same sector, supplying pay-TV services, was jointly controlled by The News Corporation Limited (NewsCorp) and Telecom Italia Spa.

59. The Authority deemed that as originally notified the concentration would lead the Canal+ group to establish a monopoly in the domestic market for pay-TV, entailing a restriction of competition that would be detrimental to viewers, particularly given the possibility of setting high prices and the lack of incentives to improve the quality and variety of services offered.

60. During the investigation the parties placed great emphasis on the inevitability of the operation since Stream would in any case be leaving the market, asking for an application of the so-called failing

firm defence. The Authority nonetheless deemed that the parties had not provided sufficient evidence that the case in question fulfilled the requirements imposed by Community case-law as for the application of the defence.

61. On the basis of the foregoing considerations the Authority deemed it necessary, for the purpose of authorization, to impose measures to counter the market power of the dominant operator in addition to the undertakings proposed by the parties. The measures would lead to substantial reduction in the barriers to entry on the satellite platform and at the same time, by making the contents available to competitors year after year, would allow the development of means of transmission other than the satellite platform. The Authority therefore authorized the concentration subject to compliance with the measures prescribed. The parties subsequently decided not to go ahead with the projected concentration.

Report on the reform of the radio and television system

62. In December 2002 the Authority sent Parliament and the Government a report, pursuant to Article 22 of Law no. 287/90, on the bill reforming the radio and television system. To begin the Authority drew attention to the fact that the radio and television system was currently the most highly concentrated in Europe and had high entry barriers, principally of a regulatory and institutional nature, that hampered the entry and impeded the growth of potential new entrants. This had led to the development of a non-dynamic market, characterized by a lack of innovation. The Authority therefore emphasized that a project for the overall reform of the national radio and television system should have a significant effect on the existing television market structure, by reducing its excessive degree of concentration.

63. The Authority again stated that it would be necessary to introduce mechanisms for the allocation and use of frequencies designed to prevent the indefinite continuation of their current *de facto* occupation and comply with the principles of objectiveness, transparency and non-discrimination set out in the latest Community directives. Moreover, the Authority drew attention to the need to effectively implement, by 31 December 2003, the 20% limit on the combined radio and television programmes eligible for broadcasting on national ground frequencies and to extend it to network operators (i.e. the companies owning part of the range of frequencies), in compliance with the ruling of the Constitutional Court. The Authority also stressed that, for the purpose of establishing limits on advertising space, the appropriate method would be not to consider a macro-sector, such as the integrated communications system (comprising the production and distribution of radio and television programmes, various forms of publishing, the production and distribution of films and advertising), but to adopt antitrust methods and criteria of analysis, such as those imposed by the Community regulatory framework. Finally, the Authority stressed that the projected elimination of the existing limits on so-called diagonal concentration, especially between publishing and television, might lead to a further decrease in the number of independent communications operators in Italy, thus also reducing the degree of competition in the publishing sector.

POSTAL SERVICES

International Mail Express-Poste Italiane

64. In May 2002 the Authority found that there had been an abuse of a dominant position by Poste Italiane Spa, which had prevented the forwarding of cross-border mail entering Italy. In particular, the aim of the investigation was to discover whether Poste Italiane had: *i*) refused to effect forwarding and delivery

COMPETITION LAW AND POLICY IN ITALY

to addressees of correspondence from abroad; *ii*) imposed an unfair price for forwarding and delivery of despatched mail. The Authority deemed that the case in question should be examined on the basis of Article 82 of the EC Treaty since those conducts, which concerned cross-border mail entering Italy, were likely to affect trade between Community member States.

65. The market concerned was identified as that of the forwarding and delivery of cross-border mail entering Italy. The Authority first stated that Poste Italiane held a dominant position in the relevant market, having been granted a reserve in the postal services sector, allowing it to manage almost all cross-border mail entering in Italy and to control the public postal network throughout the country. The investigation found that Poste Italiane had followed a policy of systematically intercepting large quantities of mail from abroad without making a distinction between mail to be re-despatched abroad (notably ABA re-despatches, i.e. despatches of mail on behalf of an Italian operator to Italian recipients but transiting through a foreign country) and despatches of ordinary cross-border mail. In particular, in many cases the Italian postal service had withheld mail at its international offices without notifying either the sender or the foreign postal operator; on occasion, it had opened the intercepted mail and even gone so far as to destroy the material without notifying the sender. Moreover, Poste Italiane had incorrectly classified some ordinary cross-border mail as ABA re-despatches and applied the ordinary domestic postage rate when providing only the forwarding and delivery service, thus charging postal users an unfair price that did not reflect the economic value of the service supplied.

66. The Authority found the practices in question to be of an extremely serious nature, since they were engaged in by an operator that had been granted a reserve guaranteeing a *de facto* monopoly on the relevant market, and ordered Poste Italiane to pay a fine of € 7.5 million.

Poste Italiane-S.D.A. express courier- Bartolini/Consorzio logistica pacchi

67. In December 2002 the Authority concluded an investigation into the creation, by Poste Italiane Spa, SDA Express Courier Spa (SDA), a company already controlled by Poste Italiane, and Bartolini Spa, of a consortium named Consorzio Logistica Pacchi Scpa (CLP) and notified pursuant to Article 13 of Law no. 287/90. In particular, under the agreement Poste Italiane, in its position of supplier of the universal service, was to employ CLP to perform the instrumental activities of sorting, transport and distribution of postal packages; in turn, CLP was to entrust the performance of those tasks to SDA and Bartolini.

68. For the purpose of assessing the agreement the Authority identified two separate product markets: the basic transport services for business customers' postal packages and the express courier service. The first market had high regulatory and fiscal barriers that impeded the entry of operators other than Poste Italiane. On the contrary, the supply of services in the express courier market had been liberalized. The market was expanding rapidly, with annual growth rates in excess of 10%. The leading market operator was Bartolini, with a share of 22.4%, followed by Poste Italiane with 21.8%.

69. From the investigation it resulted that the view that the competition in the market for basic business package transport was already heavily distorted by the existing regulations. In fact, by extending the scope of the universal service to include basic business packages, Legislative Decree no. 261/99 had created a series of financial and administrative burdens for firms wishing to operate in the sector; these limited their competitiveness and actually represented a large step backwards in terms of opening up the market to competition. The investigation also found that Poste Italiane incurred losses as a result of performing these activities and that these were subsequently financed by the State out of general taxes. This pricing policy acted as a strong deterrent to firms seeking to enter the market as they would have to apply similar prices to be able to compete with Poste Italiane and this would not ensure sufficient earnings to make the activity profitable.

70. The Authority deemed that all these elements constituted a significant barrier to entry for potential competitors. Consequently, Bartolini could not be regarded as either an actual or a potential competitor of Poste Italiane because it would have been extremely unlikely to enter the market as an independent operator without the notified agreement. The Authority therefore found that the agreement did not alter the competitive structure of the market beyond the constrictions already imposed by existing sectoral regulations.

71. In assessing the effects of the agreement on the express courier market, the Authority took it into consideration that the companies operating there belonged to large international groups (TNT, DHL, Consignia and UPS) and were therefore able to apply considerable competitive pressure. In view of the presence of several qualified operators in the express courier market, the Authority deemed that the notified agreement did not restrict competition.

Report on the sale of revenue and postage stamps to the public

72. In March 2003 the Authority sent Parliament and the Government some comments, pursuant to Article 21 of Law no. 287/90, concerning the regulation regarding the sale of revenue and postage stamps to the public. In particular, the regulation allowed revenue and postage stamps to be sold to the public only by specifically authorized outlet and offices, expressly prohibiting them from providing home delivery or performing any type of promotion or advertising their retail service.

73. The Authority stressed that this regulation could delay the introduction of more modern and efficient forms of sale, which might be more advantageous for consumers. In particular, the regulation did not seem to take account of technological progress, which, for instance, would allow revenue and postage stamps to be purchased on-line, thereby making it necessary for the retailer to provide for home delivery. New forms of distribution such as these would provide operators with important competitive tools in a market in which the limited number of licences and the obligation to apply a fixed selling price did not permit the full play of competition.

MONETARY AND FINANCIAL INTERMEDIATION

1. Insurance products and pension funds

Sai-Società assicuratrice industriale/La Fondiaria assicurazioni

74. In October 2002 the Authority opened an investigation into Premafin Finanziaria Holding di Partecipazioni Spa, Mediobanca Banca di Credito Finanziario Spa, Sai Spa and Fondiaria Spa, to assess the effects on competition in the insurance markets of the concentration involving the acquisition of 29.97% of the share capital of Fondiaria by Sai and subsequent merging of Fondiaria into Sai. The concentration would have created the largest Italian operator in the casualty insurance sector.

75. The investigation found that Mediobanca would have played a crucial role in the operation, to the extent that Mediobanca and Premafin would have exercised joint control of Fondiaria-Sai. In particular, the Authority found that: *i*) Mediobanca and Premafin's acquisition of joint control of Fondiaria-Sai, given Mediobanca *de facto* control of Generali, would have allowed Mediobanca to establish a dominant position in the casualty insurance markets through Generali and the new entity Fondiaria-Sai; *ii*) that dominant

COMPETITION LAW AND POLICY IN ITALY

position would have been likely to cause a considerable and lasting reduction in competition in the casualty insurance sector, as a result of the substantial overlapping of the parties' market shares (as a result of the operation, the Sai-Fondiaria-Generali group would have acquired market shares of between 34% and 45% in the various casualty insurance sectors, while the only competitor would have had shares of just over 10%); the marked increase in the degree of concentration; and the existence of several rigidities in the relevant insurance markets, such as distributive entry barriers, stable market shares and personal and financial links; *iii*) the companies taking part in the operation would have been able to increase prices substantially, on average by more than 10% compared with market equilibrium prices prior to the concentration.

76. In view of these factors, in December 2002 the Authority decided to authorize the operation on condition that the parties fully and effectively implemented the following measures: *i*) regarding Fondiaria-Sai's stake in Generali, the parties would not carry out any operation that would cause the total share of voting rights held by Fondiaria-Sai, in any capacity, for exercise at the general meetings of Generali to exceed at any time 2.43% of Generali's total share capital; *ii*) Fondiaria-Sai would not take part in the general meetings of Generali to the full value of its 2.43% stake, not even to allow such meetings to be validly constituted; *iii*) at the general meetings of Generali Mediobanca would refrain from exercising the voting rights associated with its 2% stake and from voting as appointee of other parties.

77. The Authority deemed that these measures, being designed to prevent Mediobanca from continuing to exercise a *de facto* control of Generali, would prevent it from establishing a dominant position in the casualty insurance markets through Generali and Fondiaria-Sai.

2. Financial services

Credit cards

78. In February 2001 the Authority opened an investigation into some major companies operating in the credit card sector – Servizi Interbancari Spa (SI), a consortium gathering almost all the Italian banks, American Express Services Europe Ltd (Amex) and The Diners Club Europe Spa (Diners) – to establish whether an agreement existed to standardize conditions for the use of credit card for petrol station transactions.

79. The evidence gathered during the proceedings indicated that the practices under investigation were the result of imitative behaviour in adjusting commissions over the years, prompted by the very specific economic conditions of the market. It was found that in petrol sales the commission charged to the credit card holder was designed to cover card costs since otherwise the retailers' extremely small margins would not have allowed such a form of payment to be used. Regarding the presumed fixing of standard conditions for arrangements with petrol stations, no evidence was found of agreements or parallel behaviour by the parties in applying the commissions. Consequently, since no elements came to light proving the existence of an agreement the Authority found that there had been no violation of antitrust law.

Banca di Roma-Bipop

80. In June 2002 the Authority opened an investigation into Banca di Roma Spa and Bipop-Carire Spa to assess the effects of the concentration in the markets for the production and distribution of individual management services for investment portfolios, investment funds and life insurance policies. One of the largest traditional banking groups (Banca di Roma) was merging with one of the foremost operators specializing in managed savings (Bipop-Carire).

81. Regarding the national markets for the production of portfolio management services, investment funds and life insurance policies, the Authority found that although the concentration had led to the

creation of an operator with a major role in the relevant markets it would not allow the new group to close the gap with its main competitors in the respective markets, particularly investment funds. Regarding the distribution markets, the investigation found only a moderate degree of geographical overlapping (notably in some local markets in Sicily and the province of Frosinone) even in respect of local-level competition, which was due to the leading position occupied by one of the parties prior to the concentration; in those areas, however, the parties competed with the main banking and insurance groups, which held very substantial market shares. The Authority therefore deemed that the concentration was unlikely to alter the structure of supply in the markets concerned or allow the parties to establish a dominant position.

Report on the practices adopted by Servizi Interbancari

82. In May 2002 the Authority sent a report to the Bank of Italy on some competition-restricting practices adopted by Servizi Interbancari Spa (SI), a consortium grouping almost all of the Italian banks. In particular, SI had issued a note fixing the commissions to be applied to retailers and card-holders, as well as the fees due to the banks.

83. In its report the Authority stressed that, although SI had been set up to foster the coordinated development of credit card management, it had extended its activities beyond the production phase of credit card management and begun to intervene in the fixing of prices applied by member banks. As a result of these practices the autonomous commercial policies of the individual banks had been replaced, at least as regards the crucial phase of fixing the price of the service, by a policy formulated centrally by SI for all its members. Following the Authority advice, the Bank of Italy opened proceedings that were still under way on 31 March 2003.

PROFESSIONAL AND BUSINESS SERVICES

Report on on-line access to the databases of the property registries

84. In April 2002 the Authority sent a report to the Government, pursuant to Article 21 of Law no. 287/90, regarding the competition-distorting effects of the rules governing on-line access to the databases of the property registries, whereby users were prohibited from selling the information acquired via on-line service. The Authority found that the prohibition was not only in conflict the aim of improving the speed and efficiency of the service provided by the property registries but also likely to limit access to the market for property, mortgage and registry searches by firms active in the collection and use of economic information. Such operators were obliged to consult the records manually, being unable to take advantage of the undeniably lower cost of the on-line service.

85. The prohibition therefore appeared to conflict with the need to ensure the correct functioning of the market. Although the Authority fully agreed that it was in the public interest to ensure that the property database could not be subject to manipulation or alteration, it pointed out that this requirement could be satisfied by other means, such as electronic protection, combined with a specific system of sanctions for on-line users found to have manipulated the data.

Report on the regulations instituting the regional environmental protection agencies

86. In May 2002 the Authority, pursuant to Article 21 of Law no. 287/90, sent some comments to the Regions regarding the regulations instituting the regional environmental protection agencies. In particular, the Authority pointed out that although the national reference legislation contained no express provision in this regard, regulations adopted by the majority of Regions allowed regional environmental protection agencies to supply services to third parties, in competition with private laboratories and professionals, using public laboratories and expertise gained in their institutional activities (the provision of technical and scientific support to the local authorities in matters of environmental protection).

87. The Authority stressed that allowing the same public entity to combine the institutional activity of control with the private activity of providing consulting services was likely to give that entity an unjustified competitive advantage. In fact, parties who were required, by law, to comply with compulsory controls naturally tended to ask the entity performing them to provide consulting services, to the detriment of other operators present in the same market.

LEISURE, CULTURE AND SPORTS

Lottomatica-Toto 2000-Betting Service-Division of EIS-Elettronica Ingegneria Sistemi

88. In June 2002 the Authority authorised the acquisition by Lottomatica Spa of a division of EIS-Elettronica Ingegneria Sistemi Spa, which manufactured software for gambling and bookmaking. The operation, as originally notified, was much more complex as it included also the acquisition of the full control of Toto 2000 Srl, which supplied bookmaking services and of Betting Service Srl, a data processing company which determined odds on races and sports events.

89. The market involved in the operation was identified as the management of gambling and bookmaking. The Authority pointed out that Lottomatica held a dominant position in the market, which was evident from its large market share (over 54%), the gap between that and the share of the second largest operator, equal to about 20% of the market, the availability of a much wider and more technologically sophisticated network for collecting bets than its competitors and the existence of entry barriers due to the existing licence system. Lottomatica's acquisition of Toto 2000, Betting Service and the division of EIS was therefore like to strengthen its already dominant position by providing it with the means to operate effectively also as a bookmaker.

90. In view of the Authority's objections, Lottomatica formally withdrew its notification of the purchase of Toto 2000 and Betting Service. The withdrawal brought about a radical change in the situation investigated and had a decisive effect on the positive assessment of the operation, which was thus limited to the acquisition of the division of EIS. While the acquisition of the division would have provided Lottomatica, with the know-how and the structures relating to an important area of betting management (the information management system and the on-line link between the agencies and the central office), it would not have strengthened its presence in a market in which it already held a dominant position.

Report on the rules governing the collection of lotto bets

91. In January 2003 the Authority, pursuant to Article 21 of Law no. 287/90, sent Parliament and the Government some comments on the rules governing the collection of automated Lotto bets, according to which the authorization to do so could only be granted to retailers of State monopoly products.

92. The Authority pointed out that these rules unjustifiably prevented other parties from collecting bets and stressed that the criteria adopted by the legislator to identify the parties authorized to engage in a given activity should be objective, should relate to qualitative characteristics and should be based on considerations of efficiency, such as the applicant's existing expertise in the field of gambling and bookmaking, opening hours and premises. The adoption of criteria leading to discrimination between operators should nonetheless comply with principles of necessity and proportionality.

Report on the methods of access to bookmaking activities

93. In February 2003 the Authority sent Parliament and the Government some comments on the rules governing the access to the provision of bookmaking services, according to which the shares or units of licensed bookmakers set up in the form, respectively, of limited companies, limited partnerships, or limited liability companies, had to be in the name of physical persons or partnerships, failing which the licence would be withdrawn. The Authority stressed that the use of a licensing system was only justified in sectors where public powers were reserved to the State and that when such licensing was justified the licensees had to be selected on the basis of objective, transparent and non-discriminatory criteria. The Authority pointed out that the subjective criterion for selecting licensees provided for in the decrees on the provision of bookmaking services did not comply with the principles of necessity and proportionality and could create entry barriers for foreign companies, most of which were in the form of listed companies.

1. Catering

Autogrill-Ristop

94. In July 2002 the Authority concluded an investigation into the acquisition of Ristop Srl by Autogrill Spa. Both companies operated in the catering sector, notably on the motorway network, Autogrill having 336 outlets and Ristop 23.

95. The relevant market for evaluating the operation was identified, in terms of product, as the provision of refreshment services to motorway users. Regarding the geographical dimension of the market, the Authority noted that, on the demand side, a single outlet could only be replaced by neighbouring refreshment areas; in particular, the substitutability of refreshment services was inversely proportional to the distance between them, the limit to this being reasonably fixed at a radius of 150 km from the consumer's location. Since Ristop only provided refreshment facilities at 20 service areas, the geographical markets were identified by calculating, for each of those areas, a zone consisting of the sections of motorway no more than 150 km before and/or after.

96. The Authority found that Autogrill held a dominant position in the supply of motorway refreshment services in all of the 20 markets considered. Regarding the effects of the operation, the Authority deemed that it would have strengthened Autogrill's dominant position in all the markets concerned, not only in terms of outlets but also of turnover. The notified operation would also have had substantial restrictive effects on potential competition. The take-over of Ristop constituted, at the time of the operation, the only means of gaining access to the market in view of the limited scope for entry by competitors caused by the use of public tender procedures for the assignment of licences.

COMPETITION LAW AND POLICY IN ITALY

97. During the proceedings Autogrill undertook gradually to sell off some of its outlets. However, in view of the geographical location and value of the outlets to be sold, the measure was not deemed sufficient to prevent a strengthening of Autogrill's dominant position in the markets concerned. The Authority therefore prohibited the concentration.

2. PUBLIC PROCUREMENT

Pellegrini-Consip

98. In June 2002 the Authority concluded an investigation into the existence of an agreement between Gemeaz Cusin Srl, Sodexho Pass Srl, Day Ristoservice Srl, Ristomat Srl, Qui! Ticket Service Spa, Ristochef Spa, Sagifi Spa and La Cascina Scarl during a call for tenders for the supply of the ticket restaurant service for government employees. In particular, the service, which was valued at a total of approximately €418,000, had been divided into five geographical lots of equal amount, corresponding to the North-East, North-West, Centre, Centre-South and South and Islands. In November 2002 the pre-qualification session was held, following which ten firms were invited to tender for the lots they had indicated. The tenders submitted for each lot included only one by a temporary association of undertakings and a variable number by individual bidders. For each lot, the best offer was that of the temporary association of undertakings.

99. The investigation found that there had been an agreement designed to: *i*) distribute the lots in the call for tenders by agreeing on the composition of the temporary association of undertakings taking part and on the identity of the firms that would bid individually; *ii*) jointly fix the discount levels for the submission of individual tenders. The aim of the agreement was therefore to eliminate any possible competition between eight of the ten enterprises taking part in the call for tenders by jointly establishing a price for the service that was higher than it would have been without the agreement and guaranteeing that each enterprise would be awarded at least one of the lots or part of it.

100. In assessing the seriousness of the agreement special importance was given to the consideration that it succeeded in eluding the intended competitive comparison guaranteed by the specific mechanisms of public selection and laid down by law as the means to select the best offer. The Authority therefore imposed fines totalling approximately €34 million.

Local public transport companies-oil companies

101. In February 2003 the Authority concluded an investigation, pursuant to Article 2 of Law no. 287/90, into 32 companies engaged in the distribution of diesel fuel, as well as Assopetroli, the association of oil product retailers, and the Provincial Unions of Heating and Oil Companies of Milan and Turin, for practices adopted during calls for tenders for the supply of diesel fuel issued by the local public transport companies in the municipalities of Turin and Milan.

102. Regarding the calls for tenders issued by the Milan local public transport company it was found that in 1999 and 2000 the companies entered into agreements to fix the prices and sharing the supply of diesel fuel according to a complex system of alternating participation in monthly and annual calls designed to ensure that all the participants would be allocated part of the total procurement contracts. In the case of the calls for tenders in Turin, the anti-competitive effect was obtained by means of an agreement to set up a consortium grouping the main participants in the call for tenders and thereby preventing them from putting in bids in competition with each other. The agreement was entered into in 1993 and lasted until 1999.

103. The Authority deemed that the agreements substantially eliminated competition, which was the very premise on which the public selection mechanism by call for tenders was based, thereby causing considerable damage. This affected the public transport services and also had repercussions for the whole

of the community. In particular, in the calls for tenders in Milan the sharing of contracts and the definition of discounts gravely damaged competition both in terms of the number and importance of the firms involved and of the magnitude of the calls for tenders. In the case of Turin the agreement was also found to be of a serious nature since it had been reached by setting up of a consortium, which made activities of the participants particularly incisive and controllable. The Authority imposed an aggregate fine of approximately €542,000.

Opinion on the calls for tenders drawn up by Concessionaria Servizi Informatici pubblici-Consip Spa

104. In February 2003 the Authority sent some observations, pursuant to Article 22 of Law no. 287/90, to the Ministry for the Economy and Finance regarding the draft calls for tenders for the supply of goods and services to general government drawn up by Concessionaria Servizi Informatici Pubblici-Consip Spa.

105. Regarding the access requirements, the Authority pointed out the negative effects on competition of provisions unjustifiably limiting the participation of firms to tenders, by establishing overly rigid pre-selection criteria. In particular, as far as the economic and financial prerequisites were concerned, the Authority stressed that they had to comply with the objective needs of general government and, more generally, with the principles of reasonableness and impartiality that should regulate the legitimate exercise of administrative discretionary powers. Regarding technical prerequisites with respect to goods and services to be supplied, the Authority stressed the need to identify precisely the economic and technical characteristics of the object of the tender without limiting the choice to specific trademarks or patents.

106. Regarding the widespread phenomenon of temporary groupings of undertakings, the Authority pointed out that this form of cooperation among firms could easily be used to restrict competition, thereby conflicting with the interests of the contracting administration as well as the aims of national and Community legislation, in which this form of association was viewed as a means of enlarging the number of participants and thereby increasing the competitive challenge during the call for tenders. In particular, the Authority stressed that calls for tender should, except in exceptional circumstances, limit the possibility of two or more undertakings forming an association when they would have been able to fulfil the technical and financial requirements individually.

107. Regarding the choice of the more efficient criterion for identifying the best offer, the Authority stressed that the criterion of the lowest price was more objective and transparent and was therefore more likely to foster competition particularly in circumstances in which the qualities of the good or service were easily identified and defined.