ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN ITALY
-- Italy --

This report is submitted by Italy to the Competition Committee FOR INFORMATION
COMPETITION POLICY AND REGULATORY REFORM: LEGISLATIVE DEVELOPMENTS IN 2007

1. Introduction

1. Starting in 1990, the Antitrust Authority has addressed to Parliament, the Government and local authorities more than 400 reports, formulating a number of proposals and recommendations on liberalisation and pro-competitive regulation in many sectors of the Italian economy. The common underlying assumption of such advocacy reports is that the prevalent structure of incentives should aim at making sure that both companies and individuals are rewarded for merit.

2. The Authority’s reports clearly show that more competition does not entail a fully unregulated market. On the contrary, it leads to a rationalisation of regulatory constraints and to the ease of bureaucratic restrictions that are not essential to the pursuit of significant public interests. Competition and regulation are not, in other words, mutually contradictory; they are complementary policies that supplement each other in an integrated manner.

3. Some important advances have already been made towards a less rigid economic system, eliminating rules that are not justifiable in general interest terms. Better regulation initiatives have mainly involved private services, although a lot remains to be done in this field. In fact, as a consequence of diffuse and unjustified restrictive regulations, Italy has not succeeded in modernising the service sector at the degree achieved in other countries. Services in Italy are still mainly characterised by small businesses, widespread inefficiencies and a low degree of innovation. Low productivity growth has kept prices high by adding inflated costs to the value creation chain. What is required is a strong modernisation of the service sector, starting from a thorough review of its regulatory framework. The resulting productivity gains will lead to a structural reduction in prices which will restore purchasing power to citizens, to the benefit of the Italian economy.

4. In 2007, several legislative provisions were adopted, affecting a variety of categories and economic interests, including liberalisation, regulatory and simplification measures. Their main aim is to give an effective boost to economic activity, while reinforcing some fundamental consumer rights.

5. The most significant innovations concerning market regulation are summarised below. Afterwards, the new regulations concerning unfair commercial practices and those governing collective damages actions will be briefly described.
2. Liberalisation, Consumer Protection and Administrative Simplification

2.1 Consumer-protection Measures in Law 40/2007

6. Law 40 of 2 April 2007 concerning the “Confirmation, with amendments, of Decree 7 of 31 January 2007 containing urgent measures for the protection of consumers, the promotion of competition, the development of economic activities and the establishment of new businesses” lays down measures designed to remove the obstacles hindering economic development in Italy and implements many recommendations formulated by the Authority through its consultation and reporting activities.

7. Chapter I of Law 40/2007 addresses inequalities in contractual power in market sectors where competition is structurally weak, which can result in significant consumer detriment. To this end, the law extends the scope of information requirements and fosters fairness in commercial practices.

8. In the communications sector, the new measures aim to ensure that final users are provided adequate information on actual prices and are enabled to compare competing offers on the market. Therefore, the law prohibits the levy of additional charges to top up prepaid cards, as well as the imposition of deadlines for the use of the credit purchased. Consumers should be informed of all elements relevant to the price structure of the services on offer, in order to assess the alternatives available on the market. Competition is fostered by facilitating consumer switching to other market players. Although these measures are justified by the weak competition dynamics in the sector, legislative (rather than merely regulatory) intervention on the price structure may introduce unwelcome elements of rigidity, since – were the cost structure to change in the future - companies and regulatory authorities may be prevented from selecting the optimal tariff.

9. The goal of empowering consumer choice through more transparent prices and contractual conditions also underpins the measures adopted for the fuel, air transport and food sectors. In the case of fuel, the law requires national road network and motorway operators to use the public information equipment installed along the roads, as well as phone networks, to inform users of the fuel prices applied by service stations on given stretches of motorway and non-urban main roads. In the air transport sector, the law provides that the advertised price should include all charges to be borne by consumers, whereas any limitation of the offer (including availability of tickets, the timing of its validity or specific booking arrangements) should be indicated clearly in the advertisement. As regards food products, the law provides that the minimum shelf-life or expiry date should be clearly legible and indelible. It should also be displayed in a way that is easy for consumers to find and read.

10. Although included in the consumer-protection measures contained in Chapter I of Law 40/2007, various provisions concerning the insurance sector also have the effect of fostering competition among businesses. Some measures to strengthen competition in the market of compulsory third-party liability motor insurance were already introduced in 2006, banning exclusive distribution clauses. The Law 40/2007 extends this prohibition to all damages insurance, in order to increase competition in the sector to the benefit of consumers and insurance agents. The same legislation also intends to protect consumers by limiting the scope for insurance companies to apply a less favourable risk class for third-party motor insurance.
Finally, in order to address the issues of information asymmetries and switching costs, the Ministry for Economic Development is entrusted with the creation of an information service enabling consumers to make reliable comparisons of competing rates for their respective user-profiles.

11. New consumer protection measures have been adopted in the banking sector as well. In this respect, the existing provisions governing early repayment, portability and substitution of mortgages have been amended. Early repayment penalties have been eliminated, albeit only for new mortgages to finance the acquisition or renovation of residential buildings or buildings where natural persons carry out their economic activity. For existing mortgages, maximum early repayment penalties should be agreed between the Italian Banking Association and consumer associations, whereas the Bank of Italy may step in if an agreement is not reached. Mortgage portability is made simpler and costless, by providing that the old bank may not refuse to accept the substitution by invoking contractual terms and that any contractual clauses obstructing the substitution or making it more burdensome are void. Such provisions facilitate the transfers of banking relationships at the initiative of mortgage holders (thus enabling consumers to reap the benefits of competition between banks) and redress to a certain extent the imbalance in contractual power between consumers and their banks.

2.2 Competitiveness Measures in Law 40/2007

12. Chapter II of Law 40/2007 introduced liberalisation and de-regulation measures to foster business development and promote competition. Some restrictions were eased or eliminated altogether, including supply restrictions, minimum distances, opening hours and residency requirements. Other measures promote administrative simplification, with the aim of facilitating business start-ups and growth.

13. The previous model, whereby market entry was often subject to mandatory licenses and restrictions on the number of outlets, has been replaced by a mere “start-of-business” declaration, although specific professional requirements may still be required on an ad hoc basis to protect other public interests in the sector. For instance, hairdressers are now only required to submit a “start-of-business” report to the town council’s “one-stop shop”, whereas all restrictions regarding the weekly closing day and the minimum distance between businesses or other numerical parameters established by local authorities have been eliminated. Hairdressers are still required to hold the appropriate qualifications and comply with the town planning and health and hygiene requirements applicable to their premises.

14. The establishment of cleaning, pest-control and porterage businesses is also subject only to a “start-of-business” declaration to be submitted to the Chamber of Commerce. Cleaning and pest-control businesses are still required to meet compulsory integrity and economic capacity requirements. Porterage, on the other hand, has been completely deregulated. The law also removed mandatory prior authorisations as well as numerical parameters and residency requirements for tour guides and tour leaders. They are still required, however, to hold the professional qualifications requested by regional laws. Finally, all restrictions on the number of driving instructors have been lifted. The pre-existing authorisation regime has been replaced by the submission of a start-of-business declaration to the local government. Moral and professional requirements, as well as financial capacity and organisational standards set forth in the current legislation, must still be fulfilled.
15. The “Single notification for establishing a business” introduced by Law 40/2007 simplifies the regulatory framework within which businesses operate, allowing for new businesses to be set up in just one day. In particular, the law provides that anyone intending to set up a business must submit a single notification to the business register, using information and communications technology (ICT) or on electronic support. This simple procedure is sufficient for all national insurance, welfare and fiscal purposes and enables the undertaking to obtain a tax code and value-added tax (VAT) number for the business. The business registrar issues a receipt that serves as valid certification to set up the business immediately, and informs the competent public offices that the notification has been submitted. These offices immediately inform the interested party and the business registrar, using ICT channels, of the tax code and VAT registration number. Within the next seven days they also provide the interested party with any other completed registration information. The notification, reception and administrative records are handled electronically and transmitted using ICT.

16. The Law 40/2007 was also meant to enhance the competitiveness of the natural gas market by increasing the volumes of gas exchanged and traded. Legislative provisions are designed to create more liquidity in the supply of gas on the domestic market, pending the opening of a gas “exchange”, to the benefit of businesses and consumers. The royalties owed to the state by concession holders for the exploitation of gas fields will be calculated as quantities of natural gas, which concession holders will be required to place on the market, while the revenues will be paid to the Treasury.

17. In order to ensure that the contracts and procedures adopted for work on the high-speed rail system comply with EU and domestic law, Law 40/2007 provides that the concessions which Ente Ferrovie and R.F.I. (respectively, the state railway and network operators) issued directly to T.A.V. Spa (the company set up to design and build the high-speed lines) in 1991-92 to build stretches of line on Italian territory should be withdrawn. The effects of such withdrawal extend to all connected agreements signed by TAV with general contractors. Following this withdrawal, contracts for these works can now be awarded through competitive tenders. The law also envisages that the compensation paid by the administration to the parties concerned is limited to the actual damage, i.e. to the costs actually incurred for planning and other activities prior to the construction work already undertaken.

2.3 The Complete Opening of the Energy Markets

18. Directives 2003/54/EC and 2003/55/EC\(^1\) set the deadline of 1 July 2007 for the complete opening of national energy markets. In this light, Law 125 of 3 August 2007 concerning the “Confirmation, with amendments, of Decree Law 73 of 18 June 2007 containing urgent measures for the enforcement of Community provisions concerning the liberalisation of the energy markets” laid down important provisions for the opening of the electricity market. At

the same time, it promotes the development of an effective competitive dynamic and provides adequate protection for consumers in the liberalised market, along three lines of intervention: i) corporate unbundling for operators in the sector; ii) the introduction of new forms of protection for smaller users; and iii) obligatory informational requirements to be met by operators in the sector.

19. As regards corporate unbundling, the law envisages that from 1 July 2007 electricity distribution should be unbundled from sales activities for operators with networks supplying at least 100,000 consumers. As a result, vertically integrated companies which until that date operated as a single corporate entity had to split and transfer to one or more separate undertakings any goods, transactions, assets and liabilities relating to sales activities.

20. Corporate unbundling in the energy markets had been envisaged for natural gas, but not for electricity, the only exception being Legislative Decree 79 of 16 March 1999, which had required Enel to set up separate companies for generation, distribution and sales and the exercise of ownership rights of the national transmission grid. In addition to unbundling for electricity distribution companies, Law 125 of 3 August 2007 also gives the Authority for Electricity and Gas the power to adopt “provisions for the functional unbundling of gas storage, under Directives 2003/54/EC and 2003/55/EC”. These directives impose corporate unbundling for transmission and distribution operators in the electricity market and for transport and distribution operators in the gas market. In so doing, they prescribe not just the establishment of separate companies, but also the substantive independence of these companies in carrying out their functions (functional unbundling)\(^2\). Hence, transmission system operators belonging to vertically integrated companies must be independent from other activities in the supply chain on the basis of minimum criteria set out in the directives in question. This applies to both their legal form and their organisation and decision-making powers. Although a number of terminological uncertainties makes the scope of Law 125/2007 somewhat unclear, it contributes to ensure the correct functioning of the market in compliance with EU provisions by preventing any discrimination, cross-subsidies and distortions of competition.

21. The issue of corporate unbundling in the energy sector to foster competition had already been addressed in another significant legislative initiative last year. This was Law 46 of 6 April 2007 concerning the “Confirmation of Decree Law 10 of 15 February 2007 containing provisions for the implementation of community and international obligations” undertaken by Italy. It amended Article 1.34 of Law 239 of 23 August 2004 concerning the “Reorganisation of the energy sector and enabling authority to the Government for the reorganisation of the current provisions governing energy” (the so-called Marzano Law) and provided that companies operating in the sale, transport and distribution of electricity and gas which are concession-holders or have been entrusted with local public services or networks may only engage in so-called “post-meter” services through separate companies. This provision is supported by the ancillary obligation to make available to competitors any information and knowledge acquired during the activity conducted under monopoly conditions or in a dominant position.

22. In addition to the unbundling requirements, Law 125/2007 also provides adequate protection for consumers during the transition to the free market system. In particular, users who acquired eligible status with effect from 1 July 2007 are given the right to withdraw from

\(^2\) Articles 10 and 15 of Directive 2003/54/EC and Articles 9, 13 and 15 of Directive 2003/55/EC.
their existing supply contracts as captive customers, under conditions established by the AEEG, and to choose a supplier other than their distributor, thus ensuring their ability to switch. In keeping with the EU universal service provisions, Law 125/2007 envisages two new electricity sales schemes: the enhanced protection service and the “supplier of last resort” service. The former is available to domestic and non-domestic low-voltage customers and small firms who have not exercised their right to withdraw from their existing supply contract, i.e. who have not entered into a supply contract in the free market. The conditions applied to these customers in terms of quality and prices correspond to those set by the sectoral regulator for the captive market.

23. For customers who at any time do not have an electricity supplier and are not included in the enhanced protection service, Law 127/2007 provides the so-called “supplier of last resort” service. Companies providing the service are selected through local competitive procedures. They get electricity on the wholesale market and set prices independently. Until the “supplier of last resort” service is operational, distribution companies are required to guarantee continuity of supply under publicly available and non-discriminatory conditions and prices. Special tariffs may be set by the Minister for Economic Development for economically disadvantaged users or those with certain medical conditions.

24. Finally, Law 127/2007 regulates information requirements to promote transparency and redress information asymmetries in the sector. First of all, in order to allow undertakings operating only in sales to formulate appropriate commercial offers and manage supply contracts, the sectoral regulator may define the conditions under which electricity or natural gas distribution companies must guarantee timely and non-discriminatory access to the last year’s consumption data for customers connected to their network\(^3\). This provision aims to reduce the competitive advantage enjoyed by sales operators belonging to companies integrated with distributors. Secondly, the law requires electricity sales companies to include information on the composition of the energy mix used to generate electricity over the last two years in bills and promotional material sent to their final customers. It also requires them to indicate any available sources of information on the environmental impact of generation, for energy saving purposes. Law 127/2007 also empowers the Minister for Economic Development to adopt initiatives to promote the security of the electricity system and price comparability for consumers. These include the definition of minimum information standards that must be accessible through bills, and the publication of comprehensive tables showing the prices recorded on the free market, broken down by customer category and reference price.


25. Legislative Decree 146 of 2 August 2007, which transposes Directive 2005/29/EC into domestic law, gave the Antitrust Authority new competences in matters concerning commercial practices between businesses and consumers. The new provisions have been incorporated in the Consumer Code\(^4\).

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\(^4\) Legislative Decree 206 of 6 September 2005.
26. The new provisions apply to “commercial practices”, defined as any act, omission, course of conduct or representation, or commercial communication including advertising and marketing, by a trader, directly connected with the promotion, sale or supply of a product to consumers. The legislative protection hinges upon the concept of “consumer”, i.e. any natural person who, in the commercial practices in question, is acting for purposes which are outside his trade, business, craft or profession. The scope of application of the new provisions is therefore wider – from an objective point of view - than the pre-existing legislation on misleading advertising, since the notion of commercial practice includes that of advertisement. This approach, inspired by Community law, merits favourable consideration, since it extends the perimeter of protection to forms of business conduct that are liable to distort the economic behaviour of consumers but do not fall squarely within the notion of advertising. From a subjective standpoint, limiting the scope of application of the law solely to natural persons acting for purposes outside their own business, trade or profession seems consistent, in systematic terms, with the general approach taken by the Consumer Code. Indeed, the protection of the interests of businesses adversely affected by misleading or unlawful comparative advertising has been removed from the Consumer Code and entrusted to separate ad hoc provisions contained in Legislative Decree 145 of 2 August 2007.

27. The new provisions prohibit unfair commercial practices. A commercial practice is deemed to be unfair when, contrary to the requirements of professional diligence, it materially distorts or could distort the economic behaviour of the average consumer whom it influences or to whom it is addressed. When the commercial practice is directed at a given target group, its unfairness is appraised in relation to the average member of that group. The legislator views the concept of unlawful commercial practices as the undue distortion of consumers’ decision-making processes and the resulting impairment of their ability and freedom to make informed market choices. The distortion to consumers’ economic behaviour thus occurs independently of any purchase of goods and services.

28. Professional diligence is defined as the standard of special skill and care which a trader may reasonably be expected to exercise towards consumers, commensurate with honest market practice and/or the general principle of good faith in the trader's field of activity. Reference to the average consumer as a parameter to evaluate unfair commercial practice does not seem likely to significantly affect the practice already followed by the Authority in matters of misleading advertising. The law refers explicitly to the need to ensure that those consumers most exposed to the risks connected with unfair commercial practices are adequately protected. It envisages that where a commercial practice – which in abstract terms has the potential to reach wider groups of consumers – exerts its adverse effects on a clearly identifiable and particularly vulnerable target, its unfairness must be assessed in the light of the average member of such group.

29. Misleading and aggressive practices are specific categories of unfair practices. Commercial practices are considered misleading when they are likely in any way to mislead the average consumer and therefore distort their decision-making process. Such deception may concern the characteristics of the product (including its very existence, its nature, the risks connected with its use, and its fitness for the purpose), its price, the nature and circumstances of the commercial practice or the rights of the consumer. A commercial practice can also be misleading when it fails to provide the average consumer with the information they need to make an informed commercial decision. In order to assess the relevance of the missing
information, all the circumstances of the case at stake, as well as the limitations of the medium, must be taken into account. Failure to comply with mandatory information requirements set by EU law entails the unfairness of the commercial practice under scrutiny. In enforcing the relevant provisions, the different government departments involved in suppressing unfair commercial practices may need to work in close coordination to avoid unnecessary duplication and ensure that administrative action is efficient.

30. Finally, the following are considered unfair: 1) commercial practices that fail to identify their commercial intent if not already apparent from the context; 2) practices relating to products that could endanger the health and safety of consumers and, by omitting to inform them of this danger, could lead them to neglect the normal rules of caution and vigilance; 3) practices likely to influence children or minors and which may, even indirectly, threaten their safety. These cases too were already governed by the law on misleading advertising, whereby the Authority has acquired significant enforcement experience over the years.

31. By contrast, the category of aggressive commercial practices, as a second type of unfair practice, is a new feature with respect to the previous legislation. Commercial practices that could considerably restrict the average consumer’s freedom of choice and therefore distort their decision-making process, and which involve harassment, coercion or other forms of undue influence, are deemed to be aggressive. The aggressiveness of a commercial practice should be assessed taking into account its nature, timing, method and persistence; the use of threatening or abusive language or behaviour, including the threat of rash or otherwise unfounded legal action; the exploitation by the trader of any specific misfortune or circumstance of such gravity as to impair the consumer’s judgement; and any burdensome or disproportionate obstacle used by the trader to prevent consumers’ exercising their contractual rights. The inclusion of these types of conduct under the notion of unfair commercial practices is justified from a systematic point of view, since misleading and aggressive practices are both detrimental to the same public interest, namely the protection of economic operators’ freedom of choice.

32. Finally, the law lists some commercial practices that must in all circumstances be considered either misleading or aggressive. The Authority will therefore prohibit the use of practices included in these “blacklists”, without any need to verify their potential to distort the commercial behaviour of the average consumer targeted by them.

33. Directive 2005/29/EC comprehensively harmonised the national legislative frameworks governing unfair commercial practices. It did not leave member states the option of retaining existing legislation or introducing stricter provisions to provide greater protection for consumers. As a result, businesses may draw up and use the same marketing strategies at European level without being obstructed by differences between the applicable national laws, a development which fosters market integration.

3.1 Procedural Issues

34. Legislative Decree 146/2007 considerably extends the Authority’s investigative and sanctioning powers. The Authority has also been designated competent body to apply Community Regulation 2006/2004/EC\(^5\) on cooperation by the national authorities responsible

for the enforcement of consumer protection laws. In enforcing these provisions, the Authority may therefore ask for assistance from consumer protection bodies in the other countries of the European Union, or assist them itself, in investigations into possible cross-border infringements of the provisions governing unfair commercial practices. It will also be possible to adopt enforcement measures on behalf of other authorities or coordinate their investigative activities, thus ensuring a more rational use of the available resources and more effective action to suppress illicit practices.

35. From the procedural point of view, the most significant innovation introduced by Legislative Decree 146/2007 concerns the possibility for the Authority to act ex officio to verify whether a given commercial practice is unfair. As a result, the Authority may now exercise its powers without necessarily receiving a request to take action, as was the case under the previous legislation. The power to act ex officio does not rule out the possibility for any party to ask the Authority to take action against commercial practices it deems to be unfair.

36. Under the regulations on investigative procedures, adopted by the Authority on 15 November 2007, the Authority may already at the pre-investigation stage invite in writing a business to desist from conduct that is potentially unfair, if it deems that there are sound reasons to consider that the commercial practice in question is indeed unfair. This power, which is explicitly included by Regulation 2006/2004/EC amongst the minimum powers available to the competent authorities to apply consumer protection provisions in cross-border settings, will enable less serious cases to be decided more quickly. This will result in a reduction in the number of administrative proceedings and related disputes. The Authority will therefore be able to concentrate its resources more usefully on suppressing commercial practices that have a more serious impact on consumers’ welfare.

37. The Authority may also require anyone who has information and documents relevant to the enquiry to hand them over and impose a pecuniary fine if they fail to do so. It may also obtain information and documents through inspections. Previously, the power to forcibly ask for documents or gain access to the business’s premises was only available to identify the advertiser and to obtain a copy of the advertisement under scrutiny.

38. Finally, the Authority is given the power to obtain commitments from the undertaking concerned to end the alleged infringement by discontinuing the commercial practice or by amending it in order to eliminate any unlawful elements. When the Authority is satisfied with the proposed commitments, it can make them binding and close the proceedings without finding an infringement. This instrument will enable the Authority to balance the public interest, i.e. the protection laws (the Regulation on consumer protection cooperation), published in Official Journal no. L 364 of 9 December 2004.

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6 Resolution 17589 of 15 November 2007, “Regulation on procedures for investigating unfair commercial practices”, published in Official Journal no. 283 of 5 December 2007. With Resolution 17590 of the same date the Authority adopted the “Regulation on procedures for investigating misleading and unlawful comparative advertising”, published in Official Gazette no. 283 of 5 December 2007. The procedure for investigating misleading and comparative advertising does not have any singular features that would justify its being treated separately from the procedure for unfair commercial practices as illustrated in the text, to which reference should be made.
investigation and suppression of unlawful acts, with the need to concentrate its resources on the cases in greatest need of protection. Commitments decisions may not be issued where the commercial practice under consideration is manifestly serious and unfair.

39. Pecuniary fines which may be imposed by the Authority for non-compliance with binding commitments range from fine ranging from 10,000 to 150,000 euros. This is equal to the penalty applied for non-compliance with injunctions or orders to remove the effects of an infringement. In such cases, moreover, the Authority may act ex officio to re-open proceedings closed when the commitments were accepted.

40. Legislative Decree 146/2007 envisages more severe fines for businesses adopting unfair commercial practices. More specifically, if a ruling prohibits an unfair commercial practice, the Authority may impose a fine ranging from 5,000 to 500,000 euros, with due consideration for the gravity and duration of the infringement. In the case of commercial practices that could pose a risk to the safety of minors or which involve dangerous products, the minimum fine is than 50,000 euros.

4. Collective Damages Actions

41. Law 244/2007 (the Budget law for 2008) introduced collective damages actions in the Italian legal system as a general instrument to protect consumers’ interests. The new provisions have been incorporated in the Consumer Code.7 The Authority has already advocated for the decision to introduce new procedural mechanisms to facilitate the resolution of disputes between businesses and consumers and enable the subjective judicial positions of the latter to be fully and promptly restored.8 The redress of consumers who have suffered damage resulting from unlawful commercial practices, of which competition infringements are a significant example, cannot be ensured by a series of individual actions, since a number of factors discourage individual consumers from bringing action for damages. These include the relative complexity of the matter and of access to evidence, the disproportionate gap between the legal costs involved and the damage, usually modest, suffered by each potential actor, as well as the adjudication timescale.

42. The difficulties experienced by consumers in gaining access to justice undermine the effectiveness of the action taken by the public authorities to suppress anti-competitive or otherwise unlawful practices, since in the absence of collective actions de facto immunity from damages also weakens the deterrent effect of the applicable provisions and related penalties.

43. The new provisions envisage the possibility of bringing collective actions to remedy the damage suffered by individual consumers “in the context of legal relationships concerning contracts signed under Article 1342 of the Civil Code, or as a result of unlawful extra-contractual acts, unfair commercial practices or anti-competitive behaviour when the rights of a number of consumers or users are damaged”. Under the new Article 140-bis of the Consumer Code, nationally representative associations of consumers and users registered in the list drawn

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7 More specifically, Article 2 paragraphs 445-449 of Law 244/2007 amends Legislative Decree 206/2005 by inserting Article 140-bis “class action for damages”.

up by in the Ministry for Economic Development are entitled to propose action for damages, as well as “associations and committees that are sufficiently representative of the collective interests being upheld”. Consumers wishing to join the action must inform the proponent in writing. The system therefore requires individual consumers to actively express their intention to participate (“opt-in system”). In any case, anyone who has not signed up to the collective action still has the option of acting individually through the ordinary channels to obtain compensation for the damages suffered.

44. In order to limit the risk of rash or unfounded actions, the new provisions envisage a preliminary evaluation of the admissibility of applications for collective damages actions. When the request is manifestly unfounded or a conflict of interests exists, or where the judge cannot identify a collective interest in need of protection through such action, the court will pronounce the action to be inadmissible.

45. Of particular significance, in relation to the Authority’s tasks, is the possibility for judges to postpone their ruling on the admissibility of the request when an investigation on the same matter is already under way before an independent authority. This provision is meant to avoid the risk of legal proceedings for damages overlapping and interfering with investigations by the Authority into the same matter – in particular by altering the incentive to apply for leniency.

46. If the court upholds the collective claim, it sets the criteria to quantify the sums to be paid to each individual participant. In the 60 days following notification of the ruling, the undertaking concerned may propose to pay a given sum. If this proposal is accepted, it is deemed to be enforceable. If no proposal is made or a proposal is not accepted, the Consumer Code envisages that a conciliatory mechanism should be established to reach an amicable settlement.
ANTITRUST ENFORCEMENT IN 2007

5. Overview

47. In 2007, the Italian Competition Authority assessed 864 mergers, 26 agreements and 9 alleged abuses of a dominant position.

<table>
<thead>
<tr>
<th>Activity of the Authority</th>
<th>2006</th>
<th>2007</th>
<th>Jan-Mar 2008</th>
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<tbody>
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<td>16</td>
<td>26</td>
<td>1</td>
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<tr>
<td>Abuse of dominance</td>
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<td>9</td>
<td>2</td>
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<tr>
<td>Concentrations</td>
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<tr>
<td>Non-compliance</td>
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<tr>
<td>Opinions addressed to the Bank of Italy</td>
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<td>1</td>
<td>-</td>
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PROCEEDINGS CONCLUDED IN 2007

<table>
<thead>
<tr>
<th></th>
<th>Non violations</th>
<th>Violations, commitment decisions</th>
<th>Outside the scope of the law</th>
<th>Total</th>
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<tr>
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<tr>
<td>Concentrations</td>
<td>837</td>
<td>6</td>
<td>21</td>
<td>864</td>
</tr>
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</table>

5.1 Agreements

48. In 2007, the Authority concluded 13 proceedings concerning agreements. In eight cases the Authority found an infringement of competition law (the legal basis was article 81 EC six times and twice article 2 of the 1990 Competition Act). In another case, the Authority found that an association of undertakings had infringed article 81 EC, while it closed the proceedings without a finding of an infringement with respect to another party who had proposed commitments under article 14 ter of the 1990 Competition Act. In one case, the Authority concluded that competition law had not been violated. In the remaining three cases, the Authority closed the proceedings by accepting the commitments proposed by the parties and making them binding. Considering the seriousness of the infringements, the Authority imposed fines on the undertakings concerned in nine cases, totalling EUR 62 millions. Finally, the
Authority investigated an alleged non-compliance with a previous injunction it issued pursuant to article 81 EC, concluding that there was no infringement.

<table>
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<th>Sector</th>
<th>Number of Completed Proceedings</th>
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<tr>
<td>Credit</td>
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</tr>
<tr>
<td>Chemicals, plastic, rubber</td>
<td>1</td>
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<tr>
<td>Constructions</td>
<td>1</td>
</tr>
<tr>
<td>Pharmaceuticals</td>
<td>2</td>
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<tr>
<td>Wood and paper</td>
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<tr>
<td>Oil industry</td>
<td>1</td>
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<tr>
<td>Advertising services</td>
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<tr>
<td>Other services</td>
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<tr>
<td>Telecommunications</td>
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<tr>
<td>Transport</td>
<td>1</td>
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<tr>
<td><strong>Total</strong></td>
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</table>

49. On March 31st 2008, ten proceedings were pending concerning agreements, seven of which based upon EC provisions and three on domestic law.

5.2 *Abuses of a Dominant Position*

50. In 2007, the Authority concluded six proceedings concerning abuses of a dominant position. In one case, the Authority found an infringement of article 82 EC, imposing a fine of EUR 23 millions. In another case, the Authority accepted the commitments proposed by one of the parties pursuant to article 14 ter of the 1990 Competition Act and closed the proceedings with reference to this undertaking, while the investigation continued vis-à-vis the other parties, which were imposed fines totalling EUR 22 millions for breach of article 82 EC. In the remaining four cases, the Authority closed the proceedings by accepting the commitments proposed by the parties and making them binding without finding an infringement.

51. In the first quarter of 2008, the Authority closed a proceedings by accepting the commitments proposed by one of the parties pursuant to article 14 ter of the Competition Act 1990.

<table>
<thead>
<tr>
<th>Abuses examined in 2007 by sector (number of completed proceedings)</th>
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<tr>
<td><strong>Sector</strong></td>
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<tr>
<td>Constructions</td>
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<tr>
<td>Electricity and gas</td>
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<td>Pharmaceuticals</td>
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<td>Telecommunications</td>
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<tr>
<td>Transport</td>
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<tr>
<td><strong>Total</strong></td>
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</tbody>
</table>
On March 31st 2008, ten proceedings were pending concerning alleged abuses of dominance, seven of which based upon EC provisions and three on domestic law.

5.3 Mergers

In 2007, the Authority assessed 864 mergers In 837 cases, a formal decision has been adopted pursuant to article 6 of the Competition Act 1990, while in 21 cases the Authority found there was no ground for action. In six cases, the authority carried out an in-depth investigation pursuant to article 16 of the Competition Act 1990. In four cases, the authorisation of the merger has been made dependent upon the undertaking’s compliance with specific conditions. In two cases, the Authority prohibited the merger.

Moreover, the Authority started one formal proceedings pursuant to article 19 of the Competition Act 1990 for non-compliance with a previous decision imposing merger remedies. Finally, the Authority carried out 9 proceedings concerning the alleged non-compliance with the obligation of prior notification of mergers. An infringement has been found in seven cases, and the undertakings concerned have been imposed pecuniary sanctions totalling EUR 339,000.

In the first quarter of 2008, the Authority assessed 203 mergers and closed one in depth-investigation, authorising the concentration subject to some conditions. Finally, 5 proceedings have been carried out concerning failure to comply with prior notification duties, all of them leading to a finding of an infringement and imposition of fines totalling EUR 25,000.

On March 31st 2008, one in depth-investigation into a merger and two proceedings for non-compliance with prior notification obligations were pending. Moreover, the Authority is considering the possibility to withdraw some of the conditions which had previously been imposed in a merger case, pursuant to article 21 of the law n. 241 of 7 August 1990.

5.4 Separation Obligations

In 2007, the Authority carried out three proceedings concerning the alleged non-compliance with the duties of prior notification laid down by article 8(2-ter) of the Competition Act 1990. In all cases an infringement has been found and sanctions have been imposed, totalling EUR 55,000. No proceedings concerning non-compliance with the duties of prior notification laid down by article 8(2-ter) of the Competition Act 1990 were pending on March 31st 2008.

5.5 Sector Inquiries

In 2007, the Authority has concluded one sector inquiry pursuant to article 12 of the Competition Act 1990 in the field of food distribution and has issued some preliminary findings concerning a sector inquiry into the field of daily, periodical and multimedia publishing. On March 31st 2008, ten sector inquiries were pending.

5.6 Competition Advocacy

The Authority issued 63 reports in 2007 and 9 in the first quarter of 2008, concerning possible restrictions and distortions of competition flowing from existing or envisaged
regulation, pursuant to articles 21 and 22 of the Competition Act 1990. As in previous years, the advocacy efforts of the Authority concerned a wide range of economic sectors.

Advocacy reports by sector - January 2007-March 2008 (number of reports)

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<td>Water</td>
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<td>Other services</td>
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<td>Recreational services</td>
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<td>Telecommunications</td>
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<td>Transport</td>
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<td>Tourism</td>
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<tr>
<td>Other activities</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>63</strong></td>
<td><strong>9</strong></td>
</tr>
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</table>

6. Agriculture and Manufacturing Activities

6.1 Food and Agricultural Products

6.1.1 Sector Inquiries

Sector Inquiry into Agri-food Distribution

60. In June 2007 the Authority completed an investigation into food distribution to analyse the operation of the distribution chain in fruits and vegetables. The aim of the inquiry was to verify whether the organisation and structure of the industry might be inefficient, resulting in higher prices for consumers. Another factor triggering the investigation was a widespread perception that fruit and vegetable prices had increased at the time of the lira-euro changeover.
61. The results of the inquiry show that product and geographic markets vary a great deal, in terms of the number and characteristics of the enterprises operating at the various stages of the distribution chain. The intersection of products, varieties, zones of origin, destination areas, and categories of suppliers and purchasers at each stage gives rise to a myriad of “micro-markets” that often are characterized by excessively long distribution chains which in turn lead to high costs and result in high prices for consumers.

62. A sample of 267 fruit and vegetable distribution chains was investigated with the help of the Finance Police. It emerged that direct supply of sales outlets by producers is fairly limited, mainly to purchases by large surfaces. In contrast, a significant number of distribution chains has three or four intermediaries. The mark-up over costs in the 267 supply chains examined ranged from 77% to just under 300%, according to the length of the distribution chain, giving an average of 200%.

63. The investigation highlighted the need to facilitate the process of shortening the supply chain in order to increase efficiency and reduce prices for consumers. The more organised and concentrated the operators at the two ends of the chain, the greater the chances of shortening it. In order for large surfaces to be able to purchase directly from producers a reorganisation of agricultural production and wholesale markets would be needed, so as to be able to meet modern distribution requirements. In particular agricultural production, which now is excessively fragmented, needs to be reorganized (for example by creating consortia) so that large quantities with homogenous qualities be available.

64. Turning to wholesale distribution, the inquiry found that for products that are not perishable and are easy to store, a short distribution chain is feasible and efficient. On the other hand products characterised by scattered sources of supply that are highly seasonal, perishable, and difficult to store, as is typically the case for fresh vegetables, it appears difficult to eliminate wholesalers altogether.

65. Wholesalers could certainly become more efficient, shortening the chain and enabling the whole range of value-added services – those that are needed to supply final distributors with a sellable product – to be performed more completely and effectively.

66. Existing organized wholesale markets could be reformed and improved by creating a network of multi-functional centres offering high-value-added services to suppliers and customers.

67. More in general, the Authority underlined that efficiency gains in the distribution chain should not be accompanied by a reduction in competition. In the case of wholesale distribution, it suggested that in standardising and rationalising the functions of the fruit and vegetable organized local wholesale markets, steps should be taken to ensure that an adequate degree of competition is maintained between service providers.

6.1.2 Reporting and Advisory Activities

Ban on Advertising for Artificial Follow-on Formula Milk

68. In December 2007, the Authority submitted an opinion to the Ministry of Health and the Ministry for Economic Development under Article 22 of the 1990 Competition Act
concerning the competition-distorting effects of Articles 11 and 12 of the “Regulation on the implementation of the provisions of Directive 2006/141/EC concerning infant formulae and follow-on formulae as intended for Community countries and infant formulae and follow-on formulae as intended for export to non-EU countries”. These articles established a total ban on advertising (apart from advertising in scientific publications specialising in children’s health and care) not just for infant formulae, as governed by Directive 2006/141/EC, but also for follow-on formulae.

69. The Authority suggested that the advertising ban for follow-on milk unjustifiably restricted competition and exceeded Directive 2006/141/EC’s provisions.

70. The domestic ban on advertising for follow-on milk was likely to reduce incentives to distribute infant formulae through channels other than pharmacies and weaken the competitive pressure of low-cost products sold under less well-known brand names. In light of these considerations, the Authority deemed that the Ministry of Health (in conjunction with the Ministry for Economic Development) should eliminate the regulations introducing the advertising ban for follow-on formulae.

6.2 Oil Products

6.2.1 Agreements

Fuel Prices on National Network

71. In December 2007 the Authority closed an investigation initiated under Article 81 of the EC Treaty into oil companies Eni, Esso Italiana, Kuwait Petroleum Italia, Shell Italia, Tamoil Italia, Total Italia, API Anonima Petroli Italiana and ERG Petroli without finding an infringement. The Authority accepted the commitments proposed by these companies under Article 14-ter paragraph 1 of the 1990 Competition Act, made them obligatory and closed the investigation. The proceeding had originated from a complaint by the Associazione Nazionale Artigiani e Piccole e Medie Imprese del Trasporto Merci (National Association of Goods Transport Small- and Medium-Sized Enterprises) about the uniform trend over the previous 12 months in fuel prices.

72. The starting point for the Authority’s investigation was an exchange of information between the oil companies. This was done by notifying the specialized press of: i) their national recommended prices, in advance of their publication on the Ministry for Economic Development’s web site; and ii) the additional components of these prices, the so-called “supplementary differentials”, not published by the Ministry and not available through other channels.

73. The Authority thought that this price transparency might have facilitated the parallel pricing observed on the market. The parallel pricing might have also been favoured by the structure of the fuel distribution network in Italy: a small number of operators (eight with nine brands), with a high degree of cooperation among them especially in the use of logistical structures; high barriers to entry; product homogeneity; and a lack of contractual power on the demand side.
74. To resolve the competition problems highlighted by the Authority at the start of the investigation, the oil companies proposed commitments, subsequently amended and supplemented, under Article 14-ter paragraph 1 of the 1990 Competition Act. The parties committed themselves to limit the transparency of recommended prices and supplementary differentials by ceasing all notifications to the specialist press. Eni, Erg, Tamoil and Esso also undertook to define recommended prices on a local, rather than national, basis in future. Furthermore they committed themselves to improve the conditions for competition in the market by increasing the degree of product differentiation and encouraging the entry of new operators, promoting the entry and development of large retailers in the gasoline market under various types of partnership agreements with the oil companies. Finally, the parties committed themselves to allow access to their logistical structures under fair, non-discriminatory and transparent conditions. Some enterprises committed themselves to end recommended-price transparency, publicising more widely the prices actually applied at each sales point.

6.3 Pharmaceutical Products

6.3.1 Agreements

Competitive Tenders for the Supply of Stoma Products

75. In August 2007 the Authority completed an investigation into Bristol-Myers Squibb, Braun Milano, Coloplast and Hollister. It found that the coordination of their conduct in response to two invitations to tender issued by the Local Health Agency of Ferrara for the supply of medical products for stoma patients was a violation of Article 2 paragraph 2 of the 1990 Competition Act. The proceeding was initiated by a complaint that the four main companies commercialising stoma products had engaged in parallel conduct. The market of stoma medical products was considered to be national, given the small number of enterprises producing and selling these products, the limited incidence of transport costs and the specific national regulations.

76. During the investigation, the Authority found that these companies had collectively agreed (by exchanging information on their strategies) not to participate in two tenders by the Ferrara’s Local Health Agency in 2003 and 2004. As a result, the Ferrara’s Health Agency was obliged, according to Italian law, to divide up the bided quantity among all suppliers.

77. The Authority considered the agreement to be a very serious violation of the law and it imposed fines on the companies concerned totalling about 4 million EUR.

Distribution of Over-the-counter Medicines to “Para-pharmacies”

78. In September 2007, the Authority completed an investigation under Article 2 of the 1990 Competition Act into Alliance Healthcare Italia, Comifar, S.A.F.A.R. - Servizi Autonomi Farmacisti Abruzzesi Riuniti Società Cooperativa and Itriafarmacia Società Cooperativa, all engaged in pharmaceutical distribution. It found that the companies had entered into a competition restricting agreement by coordinating their commercial policies to obstruct the entry of new competitors (parapharmacies) in the retail distribution of over the counter drugs in the regions of Abruzzo, Basilicata and Puglia.
The most significant evidence gathered during the investigation was the existence of contacts between the wholesale distribution companies and between these and pharmacists in order to obstruct the commercialisation of pharmaceuticals outside of pharmacies. Only after the Authority began its investigation did the companies begin to systematically supply over the counter drugs to parapharmacies in the three regions concerned.

The Authority considered the only plausible explanation of the companies’ conduct to be coordinated action. It would have been in the interests of individual wholesale distributors to extend their offering of over the counter drugs to new operators in the regions concerned by expanding their activity, diversifying their customer-base and subtracting market share from competitors. Taking into account the limited period the violation took place, from August to early October 2006, the Authority fined Alliance Healthcare, Comifar, SAFAR and Itriafarmá about 25,000 EUR in total.

6.4 Construction, Cement and Concrete Products

6.4.1 Abuse of Dominant Position

Market for Autoclaved Aerated Concrete

In October 2007 the Authority completed an investigation under Article 81 of the EC Treaty, finding that RDB and Xella International had agreed to coordinate their commercial strategies with a view to artificially share among themselves the Italian autoclaved aerated concrete (AAC) market. Furthermore RDB had abused its dominant position, violating Article 82 of the EC Treaty, by creating a complex predatory strategy designed to drive out a competitor from the Italian AAC market.

First of all from the end of 2004, Xella and RDB had agreed on a coordinated increase of AAC prices. They had also coordinated their conduct in order to avoid competition in specific segments of the domestic AAC market. Furthermore RDB had committed itself not to operate on the French territory. Finally, the two companies had agreed to acquire the remaining competitors operating in the market.

The main instrument used by the parties to implement their coordinated action was the RDB Hebel production joint venture and in particular the fact that the total production of the J-V was totally assigned to RDB by an exclusive distribution agreement. As a result, the main domestic competitor of RDB, Italgasbeton, did not have access to the essential input produced by the J-V.

Furthermore the Authority found that in 2005, RDB had adopted a complex predatory strategy against Italgasbeton, offering below cost prices to Italgasbeton customers and, more in general, to customers localized in the local markets where Italgasbeton had been most active.

In view of the gravity and duration of the agreement, the Authority issued fines amounting to 510,000 EUR for Xella and 1.86 million EUR for RDB. The Authority also required the two companies to end their joint presence in the share capital of the RDB Hebel J-V. Finally, the Authority imposed a fine of 1.96 million EUR on RDB for abuse of a dominant position.
6.5 Other Manufacturing Activities

6.5.1 Agreements

Chipboard Panel Producers

86. In May 2007 the Authority completed an investigation that ascertained that Gruppo Trombini, Sacic Legno, Sit, Sia, Sama, Gruppo Frati, Fantoni, Saib and Xilopan had violated Article 81 of the EC Treaty, by cartelising the national chipboard panel market. The investigation started with a leniency application by the Gruppo Trombini.

87. The investigation found that since 2004 the companies under examination had established a complex system to keep prices high and maintain their respective market shares. This strategy was supported by an intensive and constant exchange of sensitive information.

88. To artificially maintain the market price, they had adopted a mechanism to restrict chipboard panel production. The companies had established an agreed timetable of obligatory, scheduled production stoppages, balanced by a system of constantly monitored corrective adjustments. This had resulted in a notable reduction in the production of panels, without changing the companies’ respective market positions.

89. The Authority also found that to crystallise their positions the parties had adopted a mechanism whereby they divided up their customer base along strictly observed lines. This was backed by penalties and compensatory mechanisms when parties deviated from the agreement. In addition, the companies had jointly determined the prices and contractual conditions of supply for chipboard panels, differentiating their strategies on the basis of product quality and the characteristics of the customers served.

90. Complementing this agreed mechanism was a plan to simultaneously define their wood procurement policies by setting up a consortium that would have enabled them to eliminate any remaining uncertainty over competitors’ strategies or costs. This project, however, had not actually been implemented, partly because it was conceived only a short time before the investigation started.

91. In view of its nature and duration, the Authority deemed the infringement to be particularly serious. The Trombini Group, which had played a decisive role in the discovery of the infringement, was granted leniency and was not fined. The fines imposed on the other companies involved in the infringement varied in light of the specific circumstances applicable to each and amounted to 30.7 million EUR.

7. Electricity and Natural Gas

7.1 Abuse of Dominant Position

7.1.1 Enel Distribuzione – Activation of Supply Only After Payment of Arrears

92. In October 2007, the Authority closed the investigation into Enel and its subsidiary Enel Distribuzione by making the commitments proposed by these companies under Article 14-ter paragraph 1 of the 1990 Competition Act obligatory, without finding an infringement. The
proceeding had been initiated in order to verify whether under making the activation of a new electricity supply conditional upon the payment of arrears still unpaid by a previous contracting party for the same domestic site would represent a violation of Article 3 of the 1990 Competition Act.

93. Indeed Enel Distribuzione, supplying electricity to about 30 million out of a total of 34.4 million distribution withdrawal points and with a 73% market share, had a dominant position in the market.

94. The parties committed themselves to redefine and simplify the procedures for the activation of supply and transfers of contract for electricity supplies to new customers in sites where a previous customer had left arrears unpaid. Any conditions or preliminary procedures not normally applied to or requested of customers in general would be eliminated. New customers taking over an electricity supply previously cut off for arrears will only be asked for their name, tax code and customer/new supply number, thus ensuring compliance with the principle of equal treatment between consumers applying to take over/activate a supply contract. The parties also undertook to step up the checks and controls on the activity of operators in contact with customers, and to adopt a rapid customer reimbursement procedure in the event of mistakes in applying the new procedure.

8. Water and Waste Management Services

8.1 Agreements

8.1.1 Acea – Suez Environnement-Publiacqua

95. In November 2007 the Authority completed an investigation into Acea Spa (Acea) and Suez Environnement Sa (Suez Environnement), concluding that the two companies had violated Article 81 of the EC Treaty coordinating their commercial strategies in the national market for the operation of water services.

96. Contracts for the delivery of water services are awarded in Italy through public tender procedures where a small number of companies, always the same, compete for the contracts to be awarded. During the investigation, the Authority found that in 2001 Acea and Suez Environnement had reached a general agreement to coordinate their activities in the water services sector. Under this agreement, they had agreed to take part jointly, or in combination with third parties, in numerous water management tenders in Italy with a view to influencing their outcomes.

97. As part of their wider strategy to coordinate their activities, Acea and Suez Environnement had agreed, in particular, to participate jointly in four tenders conducted in Tuscany, while deciding to leave the Lazio Region to Acea.

98. The intensity and extent of this general cooperation plan were further demonstrated by specific episodes of coordinated action. These were Acea’s acquisition of Crea, facilitated by Suez Environnement’s intervention with the selling group, and a Suez Environnement subsidiary’s non-participation in a tender in Tuscany to avoid obstructing the temporary consortium led by Acea.
99. The companies’ systematic joint participation in the tenders in Tuscany was deemed by the Authority to go beyond what was necessary for establishing a temporary consortium, since the joint participation was decided irrespective of the characteristics of the tenders and the two companies’ ability to be awarded the contract individually. According to the Authority, the creation of temporary consortia by Acea and Suez Environnement served to coordinate their actions under their joint plan to divide up the market. In view of the gravity and duration of the infringement, the Authority fined Acea 8.3 million EUR and Suez Environnement 3 million EUR.

9. Transport and Vehicle Hire

9.1 Agreements

9.1.1 Alliances for Participation in Tenders for Local Public Transport (LPT) Contracts

100. In October 2007 the Authority completed an investigation ascertaining a violation of Article 81 of the EC Treaty by a number of companies operating in local public transport (Sita, APM Esercizi, ACTV – Azienda Consortizio Trasporti Venezia, G.T.T. – Gruppo Torinese Trasporti, Société européenne pour le développement des transports publics – Transdev, ATCM, Trambus, ATC (Bologna), ATAF, ATC (La Spezia), ATP, Tempi, TEP, APAM and COTRI – Consorzio Italiano Trasporti, Sinloc, TAG and Arpa). In particular the Authority found that these companies had participated to a number of agreements restricting competition in response to invitations to tender issued by local authorities for local public transport (LPT) contracts. In structural terms, the LPT market in Italy is served by a number of small companies, each linked to its own traditional operational “catchment area”. This market structure is not affected by the liberalisation of the sector, as envisaged by Legislative Decree 422/1997. In the early years of the reform, with prospective tenders in mind, some important operators, especially foreign ones, had acquired smaller companies.

101. During the investigation, the Authority found that from 2001 to 2006 the operators had formed strategic alliances and had also established actual consortia or companies, with a view in both cases to coordinating their participation in tenders.

102. Of the groupings involving the main companies in the sector, the following were particularly relevant: Retitalia, which included GTT, ATCM, ACTV, APM, Transdev, Arpa, CTT Srl (Pistoia) and ACTF Spa (Ferrara); TP NET, which included Trambus, ATC Bologna, ATAF, CTM Cagliari and CSTP Salerno; and Associazione 60 milioni di Km (60 MC), an agreement involving companies in the provinces of Parma (TEP), la Spezia (ATC), Genoa (Tigullio), Mantua (Apam) and Piacenza (Tempi).

103. Besides these groupings and aggregations, temporary groupings and consortia of small- and medium-sized local operators (some of them privately owned companies) were also created. The aim of these temporary groupings was to take part in tenders in the catchment areas of the participants, much more so than in tenders outside their catchment areas. More specifically, LPT companies had entered into agreements establishing macro-groupings of national significance (Retitalia, TP NET and 60 MC). Over time, these evolved into consortia or consortium companies for coordinated participation in tenders. Their express aim was to limit
competition between the parties and protect the traditional catchment areas of operators already active in the various geographical areas (so-called “defensive bids”).

104. It also emerged that temporary groupings and consortia, whose size and importance were entirely disproportionate to the requirements laid down in the invitations to tender, had been set up to support the lead operator. These grouping were distinguished more by their anti-competitive motivation than by any synergistic goal of improving the offer.

105. The inquiry also revealed that an agreement was in place between Sita and APM regarding their coordinated participation in expected or existing invitations to tender in Lazio and Abruzzo. This created the conditions to restrict direct competition between two large operators who could have taken part independently in any of the tenders. The main outcome of this coordinated action was that the two companies took part jointly in a tender announced in 2005 for services in Rome and set up Tevere TPL to make it easier to take part in future tenders. The COTRI Consortium also took part in this agreement, albeit only marginally.

106. On the basis of the evidence gathered, the Authority concluded that Sita, APM Esercizi, ACTV – Azienda Consorzio Trasporti Venezia, GTT – Gruppo Torinese Trasporti, Société européenne pour le développement des transports publics – Transdev, ATCM, Trambus, ATC (Bologna), ATAF, ATC (La Spezia), ATP, Tempi, TEP, Apam Esercizio and Consorzio Italiano Trasporti – COTRI had set up agreements restricting competition and violating Article 81 of the EC Treaty. These agreements were intended to ensure that contracts for LPT services continued to be awarded to the incumbent or to reduce competition between potential competitors taking part in tenders outside their usual catchment area.

107. Considering the gravity and duration of the agreements, the Authority fined the companies concerned for a total of 9.9 million EUR.

9.2 Abuse of Dominant Position

9.2.1 Autostrade-Prepaid Viacard

108. In July 2007 the Authority closed an investigation initiated under Article 3 of the 1990 Competition Act, accepting the commitments proposed by Autostrade per l’Italia under Article 14-ter of the law and making them mandatory. The investigation was opened following a complaint over the toll payment operator’s failure to reimburse unused, or partly used, prepaid decremental toll magnetic cards (Viacard) at the end of the two year period of validity. Being Autostrade in a dominant position, this impossibility of reimbursement might have been considered an abuse of dominant position.

109. To resolve the competition issues pointed out by the Authority, Autostrade per l’Italia committed itself to the complete elimination of the expiry date for Viacard cards, whether still to be issued or already distributed to users. To ensure that users were fully informed of these initiatives, Autostrade per l’Italia committed itself to conduct a communication and information campaign. The Authority accepted these commitments and made them mandatory.
10. Telecommunications

10.1 Abuse of Dominant Position

10.1.1 Tele2-Tim-Vodafone-Wind

110. In August 2007 the Authority completed an investigation under Article 82 of the EC Treaty ascertaining that Telecom Italia Spa (formerly Tim Italia Spa) and Wind Telecomunicazioni Spa (Wind) had abused their dominant position in the wholesale markets for termination services on their networks.

111. The investigation had been opened following complaints by Tele2 Italia and other operators (ReteItaly, Startel and Trans World Communication). It emerged that Tim, Vodafone and Wind had refused to negotiate wholesale access to their networks for operators applying for such access in order to operate as Mobile Virtual Network Operators (MVNO) or Enhanced Service Providers (ESP).

112. These same operators had also refused to enter into wholesale phone traffic reseller contracts with operators wishing to act as Air Time Resellers (ATR). The complainants also pointed out that the three operators had engaged in individual abusive practices by offering fixed-mobile (F-M) termination services to their competitors at a higher price than that proposed to their commercial divisions.

113. The relevant markets affected by these practices were:

1. the wholesale market for call access services on the mobile network. This includes the access services offered by Tim, Vodafone and Wind to operators with no network infrastructure, such as MVNO, ESP and ATR, to provide voice and data mobile services in the downstream market;

2. the markets for wholesale call termination services on each mobile network. These consist of routing and delivery services for calls originating from fixed network subscribers or calls from mobile subscribers to subscribers of another mobile operator.

3. A peculiarity of termination services is that they include as many distinct product markets as there are mobile networks. In each of these the network operator, as sole supplier, is in a dominant position. To evaluate the effects of the behaviours adopted in these markets, the Authority also considered:

4. the market for final mobile telephony services; and

5. the market for F-M services for business users, which can be distinguished from those offered to residential customers since their overall needs differ in terms of service quality and assistance.

114. During the proceeding, the Authority made the commitment proposed by Vodafone under Article 14-ter paragraph 1 of the 1990 Competition Act obligatory and closed the investigation into the company without finding an infringement. Vodafone committed itself to open its network to virtual operators, signing contracts with BT Italia and Poste Italiane Spa. In
particular, BT Italia would be able to compete in offering integrated F-M/M-M services, especially to business customers. The contract also provided for BT Italia to offer these services entirely independently of Vodafone and establish its own commercial conditions of supply and prices for final customers.

115. As regards Tim and Wind, the other two mobile operators under investigation, the inquiry found that they had engaged in conduct intended to exclude competitors both from the wholesale markets for termination services and from the connected retail market of F-M services for business customers. More specifically, Tim and Wind, which also held licences to operate fixed-network telephony services, had applied more favourable prices to their own commercial divisions than to their competitors for F-M call termination on intercom and “on net” mobile numbers.

116. Tim and Wind’s abusive conduct in the termination markets had produced concrete effects, as it had obstructed wholesale re-selling of termination services by eliminating any alternative way for their competitors to procure wholesale termination services. They had also prevented their competitors from formulating competing F-M offers for their business customers. In this context, Tim’s abusive conduct was considered more serious than that of Wind, as Tim is a dominant operator at group level, not just in the upstream market for the provision of termination services but also in the downstream market of fixed-mobile services for business users.

117. Taking into account the gravity of Tim’s abusive conduct, starting at least in mid-1999, and that of Wind, starting at the end of 2001, and considering that such conduct was still on-going, the Authority fined the two operators 20 million EUR and 2 million EUR respectively.

11. Postal Services

11.1 Abuse of Dominant Position

11.1.1 Poste Italiane – Postal Service Licensees

118. In February 2008 the Authority accepted the commitments proposed by Poste Italiane under Article 14-ter of the 1990 Competition Act, closing an investigation initiated under Article 82 of the EC Treaty without finding an infringement. The inquiry had originated from reports submitted by some of the main associations of postal businesses operating in Italy. They had complained about alleged anti-competitive behaviour by Poste Italiane in contractual relations with former licensees under Articles 4 and 23 of Legislative Decree 261/1999 for a series of postal services included in the legal reserve attributed to Poste Italiane.

119. The proceeding concerned supply agreements that Poste Italiane had entered into with delivery agencies between December 2000 and January 2007 and the invitation to tender issued in May 2007 for contracts for various postal services. The Authority deemed that the contractual conditions Poste Italiane had included in these supply contracts were likely to alter current and potential competitive conditions for the delivery of postal services. This was because they would reduce the competitive capacity of the former licensees and erect barriers to entry in the lead-up to the complete liberalisation envisaged by 2011 at the latest.
120. The Authority also noted that the invitation to tender envisaged clauses that would be particularly onerous for the ex-licensees, since they: substantially modified the object of the tender in terms of the type of services awarded; significantly reduced the quantities awarded without envisaging any constraints on Poste Italiane with respect to the services to be awarded; and contained non-competition and acceptance clauses that favoured Poste Italiane. To resolve these competition issues, Poste Italiane committed itself to:

6. calling a new tender to award the contracts for distributing and collecting correspondence and non-addressed mail and providing ancillary services in urban districts (increasing the number of lots from 50 to 70, increasing the value of outsourced services up to 168 million EUR, introducing a flexible cap on the maximum amount of services to be awarded to each company);

7. an increase in the percentage of outsourced registered mail up to 40% of the total economic value of the activities included in the tender and the introduction of a minimum percentage (25%) of guaranteed registered mail for each lot;

8. reviewing its plan to immediately and fully “in-source” the activities carried out by the delivery agencies and, instead, in-source them gradually up to 31 December 2007;

9. complying with the Decree issued by the Minister for Communications on 9 April 2001 concerning the “Approval of the general conditions of the postal service” and the applicable regulations in force;

10. promoting the implementation of the Memorandum at that time being drawn up by the Ministry for Communications, Poste Italiane, the delivery agencies and the trade unions; and

11. undertaking to respond to the consumers associations’ request to set up a discussion on service quality.

121. The Authority deemed that these commitments would remove the anti-competitive effects under investigation and decided to make them obligatory under Article 14-ter, paragraph 1, of the 1990 Competition Act. More specifically, the Authority felt that the extension of Poste Italiane’s contracts with the delivery agencies for the first quarter of 2008 would enable the former licensees to continue their activity until the outcome of the tender was announced and the new contracts awarded. The commitments concerning the value of the activities included in the new tender and the guaranteed minimum annual award for each enterprise were also sufficient to enable the delivery agencies to maintain their production capacity until the complete liberalisation of the postal markets by 1 January 2011.


12.1 Agreements

12.1.1 A.D.S. Accertamenti Diffusione Stampa-Audipress

122. In May 2007, the Authority closed an investigation into ADS-Accertamenti Diffusione Stampa, finding a violation of Article 81 of the EC Treaty. The infringement concerned the
markets for survey services for the periodical and daily press and for advertising in the daily press. The proceedings had been opened upon a complaint over ADS and Audipress’s refusal to include Metro, a free daily newspaper, in the certification systems for the diffusion and readership surveys conducted by the two associations.

123. ADS provides a certification and dissemination service for data on the circulation and diffusion of the daily and periodical press, while Audipress conducts quantitative and qualitative sample surveys on the readership of publications that have obtained ADS certification. Audipress surveys and ADS certification are used as benchmarks in the publishing sector to assess a publication’s penetration in the various socio-economic categories and assign a value to the related advertising space (rating).

124. The Authority considered that ADS and Audipress’s refusal to include Metro in their certification and survey systems might result from agreements designed to restrict access to their services by publishers of free dailies. The conduct of the two associations also seemed capable of restricting competition in the market for advertising in the daily press, since free papers were prevented from capitalising on their advertising services, to the advantage of the publishers of for-payment newspapers.

125. Considering that free papers often have an extensive network of local editions, and the presence of advertisers at the local level, ADS and Audipress’s conduct seemed likely to affect not just the national advertising market but also advertising sales in provinces where free dailies are distributed.

126. The Authority completed its investigation in February 2007 without finding an infringement by Audipress, which had submitted commitments under Article 14-ter, paragraph 1, of the 1990 Competition Act. In essence, survey regulations were amended to include the free papers in Audipress’s twice-yearly surveys. The new provisions eliminated the need for prior certification of the paper by ADS, thus removing any obstacle to the participation of free daily papers and periodicals in Audipress’s survey system.

127. The proceedings continued against ADS, which had consistently refused to admit free newspapers to their certification scheme. The Authority deemed that ADS’s conduct had caused immediate damage to the publishers of free papers by preventing them from competing on an equal footing with other publishers in the sale of advertising space. It had also created an indirect disadvantage for readers since, if the free daily press had more funding at its disposal from increased advertising revenue, it could offer more information content. The Authority imposed a fine of 8,000 euros on ADS Accertamenti Diffusione e Stampa.

12.2 Concentrations

12.2.1 Seat Pagine Gialle - 1288 Servizio di Consultazione Telefonica

128. In April 2007 the Authority prohibited the acquisition by Seat Pagine Gialle of 12.88 Servizio di Consultazione Telefonica, a company that provides telephone information services to subscribers. As a result of the merger, Seat Pagine Gialle would have acquired the rights to use the “1288” and “1248” numbers, as well as the licence for the brand. The Authority deemed the relevant market to be that of directory assistance services (fixed or mobile), for which alternative information sources constitute only imperfect substitutes. In geographical terms the
market was deemed to be national, since the electronic archives refer to a national user base, demand is expressed at the national level and the language used is Italian.

129. In Italy, subscriber information services are currently provided through numbers such as “12XY” and “892UUU” and are based on the information contained in the single national telephone subscribers database, set up under the rules laid down by the Communications Authority. Telecom Italia, BT Albacom and Eutelia were selected as the operators authorised to make the database available to third parties at a fair, reasonable and non-discriminatory price.

130. The investigation found that the concentration would have strengthened Seat’s dominant position in the national market for directory assistance services. First, the Authority considered that acquiring the third operator would give Seat 60-70% of the market.

131. Seat was the only operator that was allowed after liberalisation to go on using the same “89.24.24 Pronto Pagine Gialle” number it had had since 2001. As a result, it continued to enjoy the benefits of its advertising investments and retained its customer base and goodwill. Finally, the Authority considered that the merger would give Seat a strategic advantage, since it could exploit the synergies deriving from access to the combined information base of advertising in the Yellow Pages (paper-based and online) and the White Pages directories.

132. The merger would strengthen Seat’s dominant position, since existing competition would be eliminated, while potential competition would be curbed by rising entry barriers. Finally, the Authority noted that, on completion of the operation, the probable elimination of the “1288” brand would have led to a reduction in consumer choice and the loss of one of the specialised directory assistance operators. The Authority therefore prohibited the operation.

12.3 Sector Inquiries

12.3.1 Sector Inquiry into the Daily, Periodical and Multimedia Publishing Sector

133. In July 2007 the Authority completed the first part of an inquiry into the daily, periodical and multimedia publishing sector. The inquiry concerned the effects of public subsidies and limits on concentrations for daily newspapers. Its aim was to examine whether and how the overarching goal of protecting information pluralism can be accommodated with the protection of competition.

134. At present there are essentially two types of public support for publishing: direct economic support for certain publishing businesses; and more general indirect economic support, consisting of tariff reductions, tax incentives and soft loans.

135. According to the Authority, direct subsidies can prove an important instrument to safeguard pluralism, while at the same time promoting competition, inasmuch as they foster the entry of new operators. It may therefore be useful for new publishers to be supported during start-up.

136. More generally, however, the Authority wondered whether the open-ended nature of the available subsidies might result in some publications becoming systematically dependent on public support. As regards the effects on pluralism, the fact that structural dependence on public
funding could limit a publication’s autonomy with respect to those responsible for deciding on the beneficiaries of, and resources available for, the subsidies cannot be ignored.

137. Time limited subsidies would help only publications of interest, and force operators to seek new ways of achieving positive commercial results. Stricter allocation criteria should be enforced to prevent opportunistic behaviour and monitor the use of resources by beneficiaries.

138. The main indirect subsidy takes the form of special postage rates. They are clearly intended to encourage subscription sales, in view of their advantages for publishers. In economic terms, publishers benefit from advance payment and can count on reliable revenues. As regards content, the continuity that a body of subscribers provides enables publishers to engage in an on-going dialogue with their readers. This can be spread over a number of successive editions, along with more targeted editorial, commercial and marketing initiatives.

139. The current system of postal incentives seems open to improvement, both in achieving more intense competition between the undertakings concerned and in protecting pluralism. The Authority considered that special postal terms were not an effective means of developing subscription sales. Italy, in fact, is one of the western countries with the lowest percentage of subscriptions in relation to total sales of dailies and periodicals. Publishers attribute this gap entirely to Italy’s slow postal service.

140. Moreover, since the amount of the postal incentive depends on the number of copies sent to subscribers, only a small part of the public expenditure on these special postal rates helps protect pluralism by fostering increased subscription-based circulation for smaller or lesser known publications.

141. The rest goes to the major publishing groups. For them, however, the subsidy has a minimal impact on overall sales and does not significantly encourage the development of subscription sales. Finally, the Authority underscored that special tariff terms are only envisaged for services provided by Poste Italiane, while publishers relying on other operators or delivery systems are excluded from the subsidy.

142. This system hinders competition amongst postal companies and reduces Poste Italiane’s incentives to improve the quality of its service, where reliability and speed are decisive factors in increasing subscription sales.

143. Therefore, the Authority drew up some suggestions with a view to linking postal subsidies more directly to the goal of protecting pluralism and reducing potential distortions of competition.

144. First of all, a ceiling should be set on state subsidies in order to keep the amount available for small publishers unchanged while limiting the amount spent on the large publishing groups.

145. A more radical intervention would be to provide incentives for alternative forms of delivery, e.g. so-called “newsstand subscriptions”, where subscribers pick up their newspapers or magazines at the outlet.
146. Public funding could then be re-directed to initiatives supporting demand for subscriptions, addressed for example to certain target groups (such as schools or cultural centres) or to easier and/or cheaper distribution methods, such as subscriptions to publications disseminated over the Internet.

147. Demand-side subsidies entail less interference in competition dynamics than supply-side subsidies since resource allocation is dictated by consumers’ choices. Greater recourse to subscription sales would lead to increased price competition amongst publishers. Indeed, subscription sales are typically characterised by attractive pricing, because publishers often resort to promotional offers.

148. As regards the limits on concentrations, domestic sectoral regulation considers dominant any operator which, as a result of a concentration, ends up controlling publishers of daily newspapers whose circulation exceeds 20% of total circulation in Italy, or 50% of the circulation in an inter-regional context.

149. The Authority observed that ceilings based on circulation figures for the daily press cannot appropriately measure the undertaking’s influence on public opinion, since circulation is less significant than other indicators, such the number of readers reached. Moreover, applying the limit only to the publishers of daily papers excludes periodicals from the group of titles monitored, while the latter may play a decisive role in achieving pluralistic information. Lastly, the Authority observed that any consideration of pluralism must take into account the specific circumstances of the market and the role of daily newspapers in disseminating information. The information market as a whole has been influenced by two key factors in recent decades: increased concentration and a growing use of multimedia in the form of an interrelation between multiple channels and forms of communication. As a result, limits on ownership calculated in relation to the entire market of communications media have been introduced.

150. Considerably more information is available to consumers and enterprises now than in 1987, the year in which limits on concentration were established for daily papers. The most significant innovations correspond to the spread of the Internet and the success of the free papers, which have led to increased opportunities for access to information.

151. In the wider sector of telecommunications, the progressive development of satellite television, the digitalisation of radio frequencies and the transmission of content, including purely informational content, through mobile phones – in other words, communication vehicles that sit alongside generalist television – also merit attention. In view of these considerations, the Authority deemed that conditions where a wide range of information sources and vehicles for comment and analysis are made available to consumers should be promoted and that obstacles hindering entry by new publishers should therefore be reduced.

13. Insurance Services and Pension Funds

13.1 Reporting and Advocacy Activities

13.1.1 Third-party Motor Insurance

152. In November 2007 the Authority submitted to the Parliament, the Government, the Minister for Economic Development and the Istituto per la vigilanza sulle assicurazioni private
e di interesse collettivo (ISVAP) a report under Article 21 of the 1990 Competition Act on the distortions of competition that might result from the regulations governing the transparency of third-party motor insurance contracts.

153. The Authority observed that any informative documents provided by insurers tend to focus on aspects which are common to the market as a whole, without referring to the specificities of each individual offer and that the information on general contractual conditions is neither fully transparent nor genuinely comprehensive. The ensuing difficulties consumers encounter in comparing contractual terms offered by competing insurance companies result in low demand elasticity.

154. Such opacity stems – at least to a certain extent – also from the sectoral regulatory framework. Therefore, the Authority called for a review of the rules governing transparency, with a view to redressing the information imbalance between undertakings and consumers.

155. In order to facilitate consumers when comparing the alternatives available on the market for third party motor insurance, the Authority envisaged the drawing of a document common to all undertakings setting out standard contractual terms, while each competitor could draw a simple background note summarising the key factors differentiating its individual offer. The Authority also noted that the contractual conditions should no longer make indirect reference to refer readers to laws or regulations whose content is not spelled out clearly in the contract, or to clauses amending or supplementing other clauses in the same contract.

156. Finally, mandatory information requirements should be supported by credible threats of sanctions for non compliance.

14. Financial Services

14.1 Agreements

14.1.1 ABI-CO.GE.BAN Interbank Agreements

157. In April 2007 the Authority completed an investigation under Article 81 of the EC Treaty concerning the interbank agreements established by the Italian Banking Association (ABI) for RiBa (automated bank receipts) and RID (direct interbank bill collection) payment services. The inquiry also concerned the agreements drawn up by the Convenzione per la Gestione del Marchio Bancomat (Convention for the management of the Bancomat trademark, CO.GE.BAN) for the cash withdrawal service using Bancomat cards at affiliated automated teller machines (ATM).

158. Interbank commission represents an intermediate price paid by banks to each other. Its function is to share out the revenue for services banks provide to each other for services they offer jointly to consumers. Since such commission is set centrally and is the same for all banks, the Authority intended to ascertain its compatibility with competition rules.

159. During the investigation the parties proposed commitments, under Article 14-ter, paragraph 1 of the 1990 Competition Act, consisting in the elimination of two interbank commission charges, and in a considerable reduction of other charges. Lastly, the parties undertook to publicise on their web sites the commission they charged and any future changes,
and to check every two years any cost reductions likely to be reflected in the interbank commission level.

160. The Authority deemed the proposed commitments to be adequate and closed the investigation without finding an infringement. As a consequence of the full implementation of the commitments, interbank commission was reduced, with effect from July 2007, by between 34% and 85% for RID and RiBa services and by 18% for the Bancomat ATM service.

14.1.2 ABI-Unilateral Change to Contractual Conditions

161. In July 2007 the Authority completed an investigation into the Italian Banking Association (ABI), which had addressed to the associated banks a document endorsing a restrictive interpretation of the provisions of Article 10 of Law 248 of 4 August 2006 concerning “Unilateral amendments to contractual conditions”. This law had eliminated closing charges for bank accounts and imposed on the banks the obligations to notify their customers directly and in advance of any changes in the applicable contractual conditions.

162. The Authority considered ABI’s initiative to have a direct impact on the competitive structure of the financial services and banking markets by facilitating uniform conduct of ABI member banks with respect to: i) the circumstances justifying a modification of contractual conditions (ius variandi); ii) the right of withdrawal and the determination of which items should be included in the notion of closing charges; and iii) the arrangements for applying interest rates. Therefore, the Authority deemed that ABI’s conduct amounted to an anticompetitive agreement contrary to Article 81 EC.

163. During the proceedings, ABI adopted a number of measures, including the immediate and definitive withdrawal of the document under scrutiny. ABI also decided to start an internal discussion in order to avoid that its interpretation of legislative provisions merely reflect its members’ positions. Although it found that ABI had infringed Article 81 EC, the Authority did not impose any sanction on the ABI in view of the specific nature of the case and of the voluntary measures that had already been adopted.

14.2 Concentrations

14.2.1 Banche Popolari Unite – Banca Lombarda e Piemontese

164. In April 2007 the Authority authorised the incorporation of Banca Lombarda e Piemontese Spa in Banche Popolari Unite Sepa (hereinafter, UBI Banca), subject to some conditions.

165. The relevant product markets were: deposits and loans to households and SMEs; the distribution of insurance products; and the distribution of managed savings products.

166. In the deposit market, which is provincial in scope, the merger would increase UBI Banca’s capacity in two provinces of Northern Italy, increasing the degree of concentration in the relevant markets and creating a dominant position. The competitive risks posed by the merger were amplified by the fact that that the new entity would have been a major cooperative bank, with very strong local roots in its area of operations. The governance of cooperative banks, which are practically non contentible, would allow the post-merger entity to enact
strategies aimed at further strengthening its market position. The same competitive risk were not considered significant in the markets for households and SMEs loans in the same provinces, as well as for the distribution of investment funds and asset management.

167. The Authority authorised the concentration subject to conditions designed to prevent UBI Banca from gaining a dominant position that would entail a significant and lasting reduction of competition.

168. First, the Authority required the divestiture of some branches in the relevant geographical markets for deposits. Moreover, UBI Banca was prevented from entering in any agreement or interlocking directorate’s arrangements with Intesa San Paolo, in order to avoid any structural and personal ties between the two competitors which could weaken competition.

14.2.2 Unicredito Italiano-Capitalia

169. In September 2007 the Authority authorised, subject to some conditions, the incorporation of Capitalia in Unicredit.

170. The impact of the merger was assessed with reference to several product markets, including deposits, loans and consumer credit. The Authority also analysed the sectors of asset management; the life insurance sector and investment banking.

171. The Authority first noted that the merger would take place in a peculiar context of complex webs of direct and indirect cross-shareholdings between the new bank and other market players, including most notably the investment bank Mediobanca and the insurance company Assicurazioni Generali. Since both Unicredit and Capitalia had a shareholding in Mediobanca exceeding 18% in total and take part in the agreement amongst Mediobanca’s main shareholders.

172. The Authority deemed that in a post-merger scenario Unicredit would enjoy de facto control over Mediobanca, a situation that would have a cascade effect on Generali, since Mediobanca (Generali’s main shareholder) exercised de facto control over the company. At the same time, Generali was a member, with Unicredit and Capitalia, of Mediobanca’s shareholders’ agreement.

173. The Authority found that the concentration would have created or strengthened a dominant position in a number of markets, including: i) deposits; ii) households loans; iii) SMEs loans; iv) distribution of investment funds. Major competitive problems were thought to arise at regional level in Sicily (loans to SMEs and to medium-to-large undertakings) and Friuli (loans to public bodies). As far as the investment banking sector is concerned, the post merger entity also was to gain a dominant position through Unicredit-Capitalia’s de facto control over Mediobanca the leading market player in the insurance sector, the merger would result in Unicredit’s enjoying a dominant position in some markets through its indirect de facto control of Generali. The distribution of life insurance products would also be adversely affected, since the reduction of competitive pressure would be amplified by the complementarity of distribution channels, as Generali products are largely distributed by its network of agencies and sales agents.
174. The Authority authorised the operation subject to compliance with a number of measures. These were designed to:

1. maintain competitive conditions in the provincial markets for deposits and loans by divesting 150-180 branches to one or more independent third parties not holding shares in the new bank;

2. significantly reduce commission charges for withdrawals from ATMs belonging to other banks;

3. safeguard competitive conditions in the insurance sector, prohibiting any production and/or distribution agreements with Assicurazioni Generali, for as long as Unicredit/Capitalia remains a shareholder of Mediobanca, and envisaging the divestiture of the entire shareholding in Generali within a given time limit;

4. Unicredit/Capitalia was also required to:

5. bar any of its board members holding a governance role in Mediobanca and/or Assicurazioni Generali from taking part in the board’s discussion and voting of resolutions concerning the investment banking and insurance markets in Italy;

6. adopt internal organisational measures to ensure that no sensitive information concerning these markets is included in the information supplied to board members affected by this measure; and

7. reduce its holding in Mediobanca by divesting 9.39% of its share capital.

14.2.3 Società per i Servizi Bancari-SSB/Società Interbancaria per l’automazione – Cediborsa

175. In April 2007, the Authority authorised, subject to some conditions, the incorporation of Società Interbancaria per l’Automazione – Cediborsa Spa (SIA) in Società per i Servizi Bancari (SSB).

176. The relevant product markets affected by the merger were: i) retail clearing services offered under the interbank data transmission system (Sitrad); ii) data processing services for payments using Italian debit cards; and iii) network services. The geographic dimension of these markets was considered national.

177. The concentration the would bring together two major providers of services instrumental to banks’ payments system activities, and might determine some market foreclosure. In particular, the operation could lead to SSB acquiring a dominant position, resulting from the integration of SIA’s network services with SSB’s data processing activities for domestic debit card payments and clearing activities for domestic payment services.

178. The Authority devised specific conditions to avoid any potential anti-competitive effects flowing from the merge. In particular, SSB was required to:

1. create a separate operating unit for network activities;
2. ensure functional interoperability on all interbank connections in the shortest possible time;

3. setting tariffs for transmitting interbank data to customers, according to transparent and non-discriminatory criteria irrespective of the chosen applications centre;

4. not apply discriminatory conditions to SSB customers who, in the peripheral sections of the network, choose an operator other than SIA.

14.2.4 Intesa Sanpaolo – Cassa di Risparmio di Firenze

In January 2008, the Authority authorised, subject to conditions, the acquisition of Cassa di Risparmio di Firenze Spa. by Intesa Sanpaolo Spa.

The Authority deemed that the operation could impact on some retail banking markets (deposits, credit cards, consumer credit, managed savings and loans to households and SMEs).

In the deposits markets, the geographical concentration and capacity resulting from the operation could increase the risk of Intesa Sanpaolo acquiring a dominant position in some provinces of central Italy. The Authority also considered that the operation could produce significant overlaps in the household and SMEs loans market in the same provinces. Moreover, Intesa Sanpaolo would acquire a dominant position in the markets for the distribution of investment funds and asset management services in the provinces of Terni, Pistoia and La Spezia.

Finally, the Authority analysed the effects of the concentration in the consumer credit sector. It noted that, following the merger, Intesa Sanpaolo would have operated in these markets through three subsidiaries, holding significant market shares both in the direct credit market (at the regional level) and in the linked credit market (at the national level). The post-merger entity would gain a dominant position in the direct credit market in the regions of Veneto, Piedmont and Lombardy.

The Authority authorised the merger subject to certain conditions. First, the divestment to third parties of 29 branches owned by Intesa San Paolo/CARI Firenze in the geographical markets most seriously affected by the merger. Secondly, the Authority required Intesa Sanpaolo to dispose of its entire holding in Agos, one of the subsidiaries operating in the consumer credit markets, in order to exclude the risks of anti-competitive effects in this sector.

15. Professional Services

15.1 Concentrations

In April 2007 the Authority prohibited the acquisition of S.A.F.E., a branch of the company active in Pavia, by Sicurglobal Vigilanza Srl, and authorised the acquisition of
Securcontrol, Securcontrol PSG and Metropol Security Service, active in the provinces of Macerata, Pesaro Urbino, Ascoli Piceno, Teramo and Fermo.

186. The three relevant markets affected by the operations were: i) the market for fixed security or guard duties; ii) the market for mobile security or patrols and remote alarm systems; and iii) the market for the transport of valuables and counting services. From a geographical point of view, the extent of the market depends on the licence granted by the competent Prefect’s office which has always a municipal or a provincial extension.

187. Besides needing a licence from the Prefect’s office to enter the market, two important competition variables, staff recruitment and price-setting, are subject to authorization.

188. As a result of the investigation, the Authority concluded that Sicurglobal’s acquisition of S.A.F.E. could have created or strengthened a dominant position in the province of Pavia, where the already low competitive pressure would have been further reduced.

189. Even before the operation, Sicurglobal held a significant position in this province in the markets for fixed and mobile private security (57% and 38% respectively). The company being acquired was the second operator in these same markets (with 16% and 22%), and the only provider in the market for counting services and the transport of valuables.

190. As a result of the operation, the main competitor of Sicurglobal in Pavia would have been eliminated, while the other competitors were much smaller and constrained by regulation in terms of endogenous growth, so that they would have been much less able to respond to increases in prices.

191. Lastly, the nature of the regulatory framework meant that a sufficient degree of competition could not be ensured either through the entry of new competitors, given the regulatory barriers to entry, or through the exercise of contractual power by customers, for the most part small- and medium-sized enterprises operating locally. For all these reasons, the Authority blocked the operation since it would have created or strengthened a dominant position for Sicurglobal in the province of Pavia.

192. The Authority reached similar conclusions with respect to Sicurglobal’s acquisition of Securcontrol, Securcontrol PSG and Metropol Security Service considering the negative effects on competition in the provinces of Macerata, Ascoli and Pesaro Urbino.

193. As a result of the concentration Sicurglobal’s market shares in the provinces of Macerata and Ascoli would have risen from 68% to 100% for the fixed surveillance service and from 92% to 100% for the mobile security service. In the province of Pesaro-Urbino, market shares would have risen from 59% to 66% and from 78% to 80% respectively. Lastly, in Ascoli, its share would have risen from 13% to 55% for the fixed service and from 45% to 75% for the mobile service.

194. This increase in market shares was particularly worrying because it was accompanied by a low elasticity of demand and competitors unused capacity was particularly low. Also in Macerata, Ascoli and Pesaro-Urbino the operation would have eliminated the main competitor in a context characterised by notable barriers to entry, limited power on the demand side and the low competitive capacity of the remaining operators.
195. As a result, the operation would have enabled Sicurglobal to gain a dominant position in the markets concerned. The operation would also have led to a significant reduction in competitive pressure on the price and quality of the services offered, to the detriment of client firms.

196. In light of these competition issues, Sicurglobal proposed commitments designed to prevent dominant positions being created in the various provincial markets. After evaluating these commitments, which it considered sufficient to resolve the problems, the Authority authorised the merger subject to the following conditions:

1. Sicurglobal should forego the acquisition of the Macerata and Ascoli Piceno operations of Securcontrol, the former operating in the provinces of Macerata and Pesaro-Urbino, and the latter in Ascoli Piceno province;

2. those licences which, as a result of the acquisition of Metropol Security Service, were no longer necessary since they referred to services already provided by the purchasing company in the province of Ascoli Piceno were to be returned to the Prefect of Ascoli Piceno;

3. a request should be submitted to the Prefect of Ascoli Piceno to reduce the number of authorised Sworn Guards in excess of those actually employed in the province by Sicurglobal, Sicurglobal Vigilanza and Metropol Security Service;

4. in the province of Ascoli Piceno, the numbers of Sworn Guards employed and vehicles used to transport valuables could not be increased with respect to those in operation at that time and at the disposal of Sicurglobal, Sicurglobal Vigilanza and Metropol Security Service.