

Unclassified

DAF/COMP/AR(2014)26

Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development

12-Dec-2014

English - Or. English

**Directorate for Financial and Enterprise Affairs
COMPETITION COMMITTEE**

Cancels & replaces the same document of 04 December 2014

ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN ITALY

-- 2013 --

17-18 December 2014

This report is submitted by ITALY to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 17-18 December 2014.

JT03368519

Complete document available on OLIS in its original format

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

DAF/COMP/AR(2014)26
Unclassified

English - Or. English

EXECUTIVE SUMMARY

1. Liberalizing economic activities and enhancing competition are the main objectives of the ongoing reforms in Italy. In general, the measures undertaken by the Government and the Parliament aim to address monopolistic rents, reduce entry barriers and information asymmetries as well as to remove unnecessary restrictions on economic activities. Liberalization packages are concentrated in the services and public sectors and cover network industries, professional services and provision of local public services and utilities. Against this background, the Italian Competition Authority (ICA) is determined to play its mission to enhance consumer welfare and economic growth through sound competition advocacy and strong competition enforcement.

2. Over the past year the ICA intensified its **competition advocacy activity**, also in view of its new powers in this area. In 2013 and in the first half of 2014, the ICA delivered 139 opinions to the Parliament, the Government and public administrations at all levels. In 46% of the cases, the ICA's action prompted an amendment of the relevant provision.

3. Particularly important in this context is the advocacy activity carried out on the basis of a new tool introduced in the Competition law in 2012 as art. 21*bis* of Law 287/90, which empowers the ICA to issue opinions requesting public local entities or administrations to repeal any administrative act unduly restricting competition. In case of non-compliance to its opinion, the ICA may challenge the act before the Administrative Tribunal. In 2013 the ICA questioned 23 regional and local provisions, particularly in the sectors of insurance, retail distribution, public transport. Compliance occurred in nearly 70% of the cases. It should be noted that in the Italian institutional framework, legislative and regulatory powers in many important sectors fall exclusively or partially within the competence of regional and local authorities. Therefore, the benefits of liberalization reforms passed by the Parliament might not fully materialize unless secondary legislation and regulation enable their full implementation.

4. The ICA has also started a fruitful co-operation with the Italian Presidency of the Council of Ministers aimed at challenging restrictive regional laws before the Constitutional Court pursuant to Section 4 of Legislative Decree 1/2012. After receiving requests for opinions, the ICA timely informs the Presidency about regional laws that unduly restrict competition. Out of 87 regional laws submitted by the Presidency in the relevant period, the ICA highlighted potential competition restrictions in 15 cases. The Presidency adhered to the assessment in 9 cases and submitted the laws to the Constitutional Court.

5. Advocacy efforts have also been addressed to procurement agencies with a view to improving cartel detection in public procurement, which accounts for approximately 10% of the national GDP. In 2013 the ICA launched an initiative to assist contracting entities in identifying behavioural anomalies which might indicate bid-rigging in public procurement: a Handbook including tips and hints drawn from international best practices and the OECD Guidelines was made available to the general public and to major procurement agencies in Italy. Renewed attention on procurement led to the opening of five investigations on bid rigging in 2013, also on the basis of information received from procurement agencies that had used the ICA's Handbook.

6. The ICA has also stepped up a pro-active strategy of advocacy, in which opinions are issued not only to react to the introduction of restrictive measures, but also to urge the Government to liberalize and open markets to competition. In 2013, the ICA sent to the Government and Parliament a comprehensive

report containing a set of proposals covering different sectors, selected on the basis of their potential impact on competition and growth. The Italian Government, in the context of the National Reform Program of the European Semester, declared that it would use the Annual Law for Competition, based on the ICA's report, to introduce further liberalization measures.

7. Advocacy may facilitate **competition enforcement** action, but in turn it requires vigorous enforcement to gain weight and credibility. In 2013, the ICA concluded 15 proceedings: eight formal investigations concerning agreements, five regarding abuses of dominant positions and two merger cases. The renewed impulse to competition enforcement is also confirmed by 18 formal investigations initiated in 2013, of which 14 concern agreements.

8. Fighting cartels is at the core of the ICA's enforcement policy. The Authority has oriented its activity on sectors that can exert a strong impact on consumer welfare in this economic contingency, such as the pharmaceutical and health sector, the transport sector and local public services.

9. The health and pharmaceutical sector is particularly sensitive because it affects a fundamental right for consumers. Already in 2012 the ICA had ascertained a serious abuse of dominant position in the Italian market for anti-glaucoma medicines, which - according to internal estimations - prevented the National Health System from saving approximately 14 million euros (case Ratiopharm-Pfizer). By the same token, in early 2014 the ICA concluded a significant case against an agreement between Roche and Novartis. In the Authority's opinion, the parties deliberately created an artificial distinction between a more expensive and a cheaper drug, which in reality have similar effects and uses against AMD, a serious and widespread eyesight disease. The estimated extra costs for the National Health System caused by the agreement were 45 million euros in 2012 and potentially 600 million euros per year in the future. The Authority concluded the case imposing fines amounting to 182.5 million euros.

10. The ICA also identified restrictive practices in the sector of professional services, where several constraints on operators' activity have been removed by recent reforms. The purpose of the Authority has been to ensure effectiveness of the new competitive leeway opened by liberalization measures. Indeed, the five proceedings concluded in this field in 2013 threw light on horizontal agreements aimed at undermining increased competition on price and transparency.

11. Cartel detection is difficult and the ICA strives to reinforce all tools available. Besides the positive feedback to the mentioned Handbook against bid rigging, the ICA experienced an increasing number of national leniency applications in 2013. To increase transparency and deterrence of the ICA's sanctioning policy system, in 2013 a working group was established to draft Guidelines for the calculation of fines, which have been subject to public consultation before approval. Furthermore, the Authority, in conjunction with the European Competition Network, has developed IT forensic capacity that allows for more effective inspections of electronic files whilst respecting confidentiality.

12. With regard to abuses of dominant position, the ICA identified a tendency by several former legal monopolists to adopt behaviours aimed at hindering the opening of the relevant market and the entry of competitors, mainly by refusing access to an essential resource or by raising rivals' costs. This infringements resulted all the more negative insofar as they took place in sectors, e.g. telecommunication and postal services, already characterized by asymmetries that already penalize competitors and may unduly preserve dominant positions, to the detriment of economic growth.

13. More generally, the Authority showed less inclination towards commitments, which were accepted only in one case. Moreover, the ICA fined a company for non-compliance with the conditions imposed to grant the authorization of a merger and fined the parties to four proceedings about non-compliance with the obligation of prior notification of mergers.

14. Finally, since 2013 a new funding system for the ICA has become effective. It is based on a mandatory contribution for companies incorporated in Italy whose turnover exceeds a threshold of 50 million euros. The revenues from this contribution replace all previous forms of funding. This system fosters resource stability and ensures ICA's financial independence.

15. Accountability becomes even more important in this new scenario and the Authority increased its efforts to enhance transparency and impact assessment. To this end, the ICA conducted an assessment of the impact of its competition enforcement in 2013 in terms of social welfare, based on OECD's guidance for the evaluation of competition interventions. The benefit has been estimated in 133 million euros for agreements and 269 million euros for abuses of dominance. These figures are conservative because they only consider the direct effects on the specific market affected by the behaviours.

16. The purpose to increase transparency and legal certainty is also at the core of several public consultations carried out by the ICA over the last few years, which *inter alia* concerned leniency programs and commitment submissions. Noteworthy in this respect has been the recent adoption of Guidelines clarifying the methodology and criteria that the ICA intends to use for setting fines for competition infringements.

1. Changes to competition laws and policies, proposed or adopted

17. The ICA has recently been entrusted with powers to monitor and sanction unfair practices that affect the correct functioning of competition in the markets if there is a significant imbalance of contractual power (Article 62 Law n. 27/2012) which, in markets characterized by an asymmetrical structure along the supply chain, is mostly related to an undue exercise of buyer power on the demand side to the detriment of suppliers. As highlighted in a market inquiry concerning retail distribution concluded in July 2013¹, the ICA will prioritize its intervention in this field according to the following criteria: i) the sizeable effect of the unfair practice (significance of the restriction on competition); and ii) the pervasiveness of the unfair conduct.

18. In October 2013, the ICA launched an initiative to assist contracting entities in identifying (and reporting to the ICA for information) behavioural anomalies which might indicate bid-rigging. In particular, the ICA issued a handbook ('Vademecum'), based on the OECD Guidelines for fighting bid-rigging in public procurement of February 2009, including tips and hints for identifying and deciphering signals of potential bid-rigging. The ICA suggests the economic context should first be considered, as signs of collusion are typically more frequently found where the affected markets present certain characteristics, such as: a limited number of competitors or competitors characterized by similar size and efficiency; homogeneous products; repetitive bidding by the same companies; and contracts subdivided into several lots of similar economic value. Indicators of possible bid-rigging include: (i) the boycott of the tender by competitors; (ii) cover-pricing (such as bids made for the sake of appearance but blatantly unable to win the tender); (iii) subcontracting or the use of groups of economic operators, including temporary associations for market-sharing purposes; (iv) rotation of bids, *i.e.* firms that appear to take turns as to wins the tender, (v) 'suspicious' elements in the documentation used for participation in the tender (e.g. common misprints, same handwriting, reference to questions of other bidders, similar estimates or calculation errors, delivery simultaneously or by same subject, so forth)².

1 Inquiry on Retail Distribution Sector.

2 The Handbook is available at: http://www.agcm.it/trasp-statistiche/doc_download/3955-delibera-e-vademecum.html.

19. In 2013 the ICA signed two Memorandums of Understanding with the Telecom regulator (Agcom) and the Insurance regulator (Ivass) respectively, with a view to ensuring effective co-operation and mutual support with regulators.

2. Enforcement of competition laws and policies

2.1 Action against anticompetitive practices, including agreements and abuse of dominant positions

2.1.1 Summary of activity

20. In 2013, The Italian Competition Authority assessed 2 mergers, 8 agreements and 5 alleged abuses of dominant position.

Table 1. Activity of the Authority

	2012	2013
Agreements	4	8
Abuses of dominant position	10	5
Mergers of independent enterprises	5	2
Sector inquiries	1	4
Non compliance	-	1
Post-merger monitoring/assessment	1	-

Table 2. Proceedings concluded in 2013, divided by type and outcome

	Non-infringement of the law	Infringement of the law, conditional authorization, modification of agreements, acceptance of commitments	No jurisdiction or inapplicability of the law	Total
Agreements	2	6	-	8
Abuses of dominant position	1	3	1	5
Mergers of independent enterprises	58	1	21	80

21. In 2013, the Authority concluded 8 investigations concerning agreements³. In 6 cases the proceedings confirmed the infringement of law no. 287/90. Two cases concerned violations of article 101 of the Treaty on the Functioning of European Union⁴ (TFEU), while the other 4 concerned a violation of article 2 of the competition law⁵. There were 2 cases in which the Authority found no evidence of infringement of the law⁶.

3 Ferries' tariffs to and from Sardinia; Council of the register of lawyers/Denial to practice as lawyer; Strategic agreement Impregilo-Salini; Mondadori Electa-Réunion des Musées nationaux JVCO; Board of notaries of Lucca/Controls on the implementation of tariffs; Board of notaries of Milan/Resolution no. 4/2012; Board of notaries of Bari/Conformity to resolution no. 4/2912; Board of notaries of Verona/Resolution of February 9, 2012.

4 Strategic agreement Impregilo-Salini; Mondadori Electa/Réunion des Musées nationaux/JVCO.

5 Tariffs of ferries to/from Sardinia; Council of the register of lawyers-Denial to practice as lawyer.

6 Board on notaries of Lucca/Controls on the implementation of tariffs; Board of notaries of Milan/Resolution no. 4/2012; Board of notaries of Bari/Conformity to resolution no. 4/2012; Board of notaries of Verona/Resolution of February 9, 2012.

22. Having regard to the seriousness of the infringements, the Authority imposed fines totalling EUR 8,262,512 to the companies involved. In one case, the Authority recalculated the fine imposed on the undertakings for a violation ascertained in the past⁷.

23. Sixteen investigatory proceedings were still under way as of 31 December 2013, 12 of which pursuant to article 101 of TFEU,⁸ and 4 pursuant to article 2 of law no. 287/90.⁹

Table 3. Agreements examined in 2013, divided by economic sectors (proceedings concluded)

Main sector involved	
Transportation and hiring of means of transport	1
Constructions	1
Recreation, sports and cultural activities	1
Professional and business support activities	5
Total	8

24. In 2013, the Authority concluded 5 investigations concerning abuses of dominant position.¹⁰

25. In 2 cases, the proceedings confirmed the infringement of article 102 of the TFEU¹¹. One case was considered outside the scope of law no. 287/90¹², while in another case the Authority found there was no violation of the law¹³.

26. Pursuant to article 14-ter, paragraph 1 of the law, the Authority accepted in one case the commitments proposed by one of the parties, making them binding and without finding an infringement of law no. 287/90¹⁴.

27. Having regard to the seriousness of the infringement ascertained in one of the two cases of violation of article 102 of TFEU, the Authority imposed a fine totalling EUR 103,794,000 on the company involved¹⁵.

7 Concrete market/Recalculation of fine.

8 Barriers to entry to a new operator on the mobile telephone services market; Market of technical accessory services; Multi-mandate insurance agents contracts; Call for tender in the public transport liability insurance sector; Enervit/Distribution contracts; Maritime transport in the Strait of Messina; Group purchasing for wholesale distribution; Restrictions in the code of conduct of the National Federation of Physicians and Dentists; Restrictive conducts of National Forensic Council (CNF); Solar and wind inverters – Minimum process; Maritime transports in the Naples Gulf; Roche-Novartis/Avastin and Lucentis Pharmaceuticals.

9 Tenders for thermal mud management in Lombardia and Piemonte Regions; Post-production services of RAI TV programs; Mutual Union of public notaries in Veneto Region; Private healthcare in Abruzzo Region.

10 Selective procedures by Lega Calcio in 2010/11 and 2011/12; Wind-Fastweb/Restrictive conducts by Telecom Italia; RTI/SKY-World Championship; VAT on postal services; Assofort/Aeroporti di Roma-Airport services.

11 Wind-Fastweb-Restrictive conducts by Telecom Italia; VAT on postal services.

12 Selective procedures by Lega Calcio in 2010/11 and 2011/12.

13 RTI/SKY-World Championship.

14 Assofort-Aeroporti di Roma-Airport services.

Table 4. Abuses examined in 2013, divided by economic sectors (proceedings concluded)

Main sector involved	
Telecommunications	1
Television rights	2
Postal services	1
Transportation and hiring of means of transport	1
Total	5

28. On 31st December 2013, 4 proceedings pursuant to article 102 of the TFEU¹⁶ and one investigation pursuant to art. 3 of law no. 287/90 were pending¹⁷. Furthermore, one proceeding was underway in order to ascertain violation to the binding commitments accepted by the Authority pursuant to art. 14^{ter}, paragraph 1 of the law¹⁸.

2.1.2 Description of significant cases

2.1.2.1 Agreements

29. The main decisions adopted by ICA against cartels involved some crucial sectors where competition restriction seriously affects consumer welfare.

30. In June 2013, closed a formal investigation concerning maritime passenger transport. The case was opened in May 2011 against several ferry operators following the receipt of many reports from passengers complaining about increasing fares charged for the maritime links between Sardinia and Continental Italy. The ICA concluded that the parties breached Article 101 TFEU insofar as they collectively agreed to raise the 2011 Summer season fares for routes connecting the Sardinian ports of Golfo Aranci/Olbia and Porto Torres with the ports of Civitavecchia, Livorno and Genoa/Vado Ligure. The ICA qualified the conduct as a single complex anticompetitive agreement falling within the notion of concerted practice. The existence of the concerted practice was inferred from the parallelism in the market behaviour of the parties, the absence of credible alternative explanations for such parallelism and qualified contacts between parties. (I743 - *Tariffs of ferries to/from Sardinia*). The decision was quashed by the tribunal of first instance. The ICA appealed the tribunal's ruling; the judgment by the Council of State is pending.

31. As regards professional services, the ICA carried out four investigations towards the Boards of Notaries in Lucca, Milan, Bari and Verona, which entered into four different restrictive competition agreements that infringed Art. 2 of the Italian Competition law. The Boards tried to thwart a tariff liberalization introduced by a recent Decree-Law and to reintroduce the repealed tariffs as reference points for determining notaries' remunerations. In particular, the parties threatened to use disciplinary measures against the notaries who would not conform themselves. The ICA imposed sanctions calculated on the basis of membership fees. During the investigations, the Boards revoked the acts aimed at reintroducing the tariffs (I747 - *Board on notaries of Lucca/Controls on the implementation of tariffs*, I749 - *Board of notaries of Milan/Resolution no. 4/2012*, I750 - *Board of notaries of Bari/Conformity to resolution no. 4/2012*, I753 - *Board of notaries of Verona/Resolution of February 9, 2012*).

15 Wind-Fastweb/Restrictive conducts by Telecom Italia.

16 Conto TV/Sky Italia; Nuovo Trasporto Veloce-Ferrovie dello Stato-Barriers to entry to the market of high-speed rail transport of passengers; Production and provision of cholic acid; SEA-ATA convention.

17 Akron-Differentiated collection of paper waste.

18 Acquedotto Pugliese-Connections to the water and sewerage systems-Non compliance.

32. Furthermore, in April 2013 the ICA decided that five Bar Associations (Civitavecchia, Latina, Tempio Pausania, Tivoli e Velletri) had infringed Article 101 TFEU. The ICA initiated an investigation in December 2011, following complaints filed by lawyers qualified in Spain as ‘Abogado’ and the ‘Associazione Italiana Avvocati Stabiliti’ (AIAS), which represents the holders of law degrees and those who are qualified to practice law in other EU Member States. The Bar associations were found to have engaged in anti-competitive practices in order to exclude non-Italian professionals from practicing law in Italy. The evidence revealed that the Bar Associations had adopted regulations and deliberations introducing additional requirements for non-Italian lawyers to register themselves in the ‘Special Section of Established Lawyers’, thereby creating obstacles to non-Italian professionals to practice in Italy. The ICA found that such provisions constituted competition-restricting agreements designed to foreclose or restrict the entry into the market of professionals admitted to the bar elsewhere in the EU, affecting the establishment and integration process pursued by the Directive on the Legal Profession and the ruling by the Court of Justice of the European Union on case C-506/04 - *Wilson (I745 - Council of the register of lawyers-Denial to practice as lawyer)*.

33. The activity against prohibited agreements culminated in February 2014 with the decision concerning the case against Roche and Novartis, opened in February 2013. The ICA fined the two pharmaceutical companies for having set up a complex collusive strategy, with a view to avoiding that the commercial success of Lucentis be hindered by the ophthalmic applications of Avastin. The parties deliberately created a false distinction between Lucentis, a more expensive drug, and Avastin, a cheaper drug, which in reality have similar effects and uses. Lucentis and Avastin treat serious eyesight conditions, including age-related macular degeneration (AMD), which is the main cause of blindness in the developed world. The collusion may have hindered access to treatment for many patients and led to the Italian National Health Service paying 45 million euros extra in 2012. The Authority estimated that, had Lucentis replaced Avastin completely, the future extra cost to the health service may have exceeded 600 million euros. Novartis’s fine was 92 million euros while Roche received a penalty of 90.5 million euros (*I760 - Roche-Novartis/Avastin and Lucentis Pharmaceuticals*).

2.1.2.2 Abuses

34. The ICA sanctioned abuses by dominant players that tried to exclude competitors from the market or distorted an intermediate market, thus leading to higher prices for final consumers.

35. In the telecommunication sector, in May 2013, the ICA fined Telecom Italia, the incumbent in telecommunications markets in Italy, 103.8 million euros for abuse of dominant position on the wholesale markets for network infrastructure access (Local Loop Unbundling - LLU) and broadband access (bitstream) between 2009 and 2011. The case originated from complaints lodged by two Italian telecommunications providers. The first abuse consisted of a constructive refusal to supply access to Telecom’s network, implemented by rejecting a large proportion of competitors’ wholesale orders to access its network (so-called ‘KO’) during the delivery process. The evidence suggested that the exceptionally high levels of KOs for other telecommunications providers could be attributed to the delivery process used by Telecom to provide wholesale services. Such process was different from the process used internally to serve Telecom’s internal retail divisions, which did not face such a high proportion of KOs. Although the process was subject to sectoral regulation, the ICA found that Telecom had sufficient scope to adjust its delivery process to reduce the level of KOs received by competitors. As for the second abuse, it appeared that Telecom charged – in contracts with medium/large business customers – discounted prices not replicable by an equally efficient competitor. Specifically, Telecom adopted a margin squeeze strategy in the provision of narrowband access to medium/large business customers. The economic analysis showed that the difference between the discounted prices set by Telecom and the wholesale prices charged to other telecommunications providers for the essential inputs was not sufficient to cover the incremental (network and commercial) costs incurred by an equally efficient competitor in the provision of narrowband access

services. The ICA concluded that by implementing this abusive strategy infringing Article 102 TFEU, Telecom was able to reduce the ‘natural’ erosion of its market share (A428 - *Wind-Fastweb/Restrictive conducts by Telecom Italia*).

36. In the postal services, in March 2013 the ICA held that Poste Italiane, the Italian postal service incumbent operator, abused its dominant position in breach of Article 102 TFEU. Poste Italiane is under the obligation to deliver the “postal universal services” in Italy and, in certain circumstances, is entitled not to apply VAT for these services in order to benefit all customers. However, in breach of this obligation, Poste Italiane did not apply VAT to several services provided for by individually negotiated contracts with large Italian companies. The ICA held that such contracts, according to Directive (CE) No. 112 of 2006 and the consolidated European Union case-law, could not benefit from the VAT exemption as they were not applied to all customers but only to specific clients. In such a way, the purpose of the VAT exemption was disregarded and Poste Italiane was able to apply a discount (equal to the VAT amount) to postal services that could be performed by rival postal services operators. In such a context, competition between Poste Italiane and PSOs was seriously impeded insofar as Poste Italiane could charge far lower prices for the same postal services. The behaviour of Poste Italiane, in the ICA’s view, was justified by a mandatory national law which provided for exemption from VAT for services supplied as part of Poste Italiane’s universal postal service, without excluding services for which the terms have been individually negotiated. This legislation, nevertheless, was in conflict with Community law and with Article 102 of the Treaty prohibiting the abuse of dominant market position. The decision of the European Court of Justice of 9 September 2003 (Case C-198/01) laid down that, in the event of behaviour on the part of undertakings in contrast with the prohibition against abuse of dominant position which is imposed or encouraged by a national law, the national competition authority is obliged to disapply the national law. This obligation has been recognised by Italian constitutional and administrative law (A441 - *VAT on postal services*).

37. In the airport services sector, the ICA closed an investigation against the manager of Rome Fiumicino airport, Aeroporti di Roma (ADR). ADR was alleged to have abused its dominant position in the market for the provision of access to common and exclusive use facilities necessary to carry out economic activities at Fiumicino. In the ICA’s view, ADR charged excessive prices to Hertz Italiana (Hertz). Hertz started providing low-cost car rental services, which enabled clients to make their bookings through a dedicated internet site and to use the parking lots located outside the airport. ADR objected that Hertz breached the sub-concession contract and asked it for payment of the royalties for such activity. The ICA was concerned that ADR was charging excessive prices by requiring Hertz to pay fees for services ADR did not supply, because Hertz did not need access to space within the Fiumicino terminal. To overcome the competition concern, ADR submitted a set of behavioural commitments that, following a market test, were approved and made binding by the ICA (Case A442 *Assofort-Aeroporti di Roma-Airport services*).

38. Finally, the ICA fined the Hera Group, which holds a monopoly in the collection of municipal waste in several Italian provinces, for supplying cellulosic waste to another company of the same group at below market price. The proceedings involved three undertakings of the Hera group (Hera S.p.A., Herambiente S.p.A. and Akron S.p.A.). In its decision of February 2014, the ICA found that Hera’s conduct infringed art. 3 of the Italian Competition law: the behaviour foreclosed downstream competitors from accessing an essential input for recycled paperboard and therefore reduced competition in the market for used paper. In addition, the sale at a price below market level produced an extra-profit for the Hera Group that was kept within the group and that should have been transferred to Emilia-Romagna consumers in the form of lower taxes for the municipal waste collection service. The ICA ordered Hera and Herambiente to cease their abusive conducts and required to auction the paper waste (A444 - *Akron-Differentiated collection of paper waste*).

2.2 *Mergers and acquisitions*

2.2.1 *Statistics*

39. In 2013 the Authority examined 80 mergers. In 58 cases the Authority found there was no infringement of the law, whereas 21 cases were closed for lack of jurisdiction or for inapplicability of law no. 287/90. In 2 cases, the Authority carried out investigatory proceedings pursuant to article 16 of the law: one case was concluded without ascertaining the infringement¹⁹, while in the other case the merger was prohibited²⁰.

40. In one case, the Authority imposed a fine for non-compliance with the conditions imposed to grant the authorization of a merger, in violation of art. 19, paragraph 1 of law no. 287/90²¹.

41. Furthermore, the Authority concluded 4 proceedings concerning non-compliance with the obligation of prior notification of mergers²². In all cases the proceedings confirmed the infringement of article 19, paragraph 2, of law no. 287/90, and the parties were sanctioned with a fine amounting to a total of 28 thousand euros.

42. On 31 December 2013, one investigation was underway in order to ascertain whether any changes occurred to justify the annulment or revision of conditions previously imposed by the Authority to authorize a merger, pursuant to art. 6 of law no. 287/90²³.

2.2.2 *Summary of significant cases*

43. The prohibited merger consisted in the acquisition from ENI of the joint control of a local gas provider, Isontina Reti Gas (Isontina), by Italgas – the main national gas distributor - and Hera/Acegas Aps – a major local distributor in the northwest Italian Regions. The acquisition of Isontina was explicitly aimed at creating a vehicle whose purpose was the participation in the competitive tenders to be issued for the appointing of the concessions for the gas distribution in six ATEMs²⁴. At the time of the notification, it emerged that one or both acquiring undertakings had a significant presence, in terms of ‘points of gas delivery’, in each relevant ATEM. The results obtained from the market test enabled the ICA to identify at a pre-merger stage the most credible participants in the relevant tenders, generally in the number of three for each of the six tenders in the absence of the merger, and then to assess the merger’s effects. In particular, from the assessment of the results of the market test it emerged that Italgas and Hera/Acegas Aps were to be considered as two of the three main potential competitors in four of the six relevant tenders. Therefore, the ICA considered that the merger would have reduced the number of credible participants in the relevant tenders. In fact, following the merger, the concentrated undertakings, through Isontina, would have been dominant in at least four of the relevant tenders. This would have affected negatively the competitiveness of the tenders and ultimately adversely impacted on the service supplied to final

19 M-Dis Distribuzione Media-Press Services Liguria-Distribution and Publication Company/GE-DIS.

20 Italgas-Aceagas-APS/Sontina Reti Gas.

21 Compagnia Italiana di Navigazione/Branch of Tirrenia Navigazione.

22 Puma-Dubotex; Marfin-Acosta/Investment Services; Sorgenia-Enerman.it/Eolica Bisaccia; Eesselunga-CO.GE.MAN.

23 Telecom Italia-Seat Pagine Gialle.

24 Art. 46-bis of the Decree Law no. 159 of 1 October 2007 provides that calls for tender should no longer be issued by a single municipality, but by municipality groups within larger territories, the so called “Ambiti Territoriali Minimi” (ATEM).

consumers (C11878 - *Italgas-Aceagas-APS/Sontina Reti Gas*). The court of first instance quashed the decision. The appeal before the Council of State is pending following the ICA's appeal.

44. In one case, the Authority imposed a fine for non-compliance with the conditions imposed to grant the authorization of a merger, in violation of art. 19, paragraph 1 of law no. 287/90 (C11613B - *Compagnia Italiana di Navigazione/Branch of Tirrenia Navigazione*). Moreover, the Authority concluded four proceedings concerning non-compliance with the obligation of prior notification of mergers (*Puma/Dobotex, Marfin-Acosta/Investment Services, Sorgenia-Enerman.It/Eolica Bisaccia, Esselunga/Co.Ge.Man*). In all cases the proceedings confirmed the infringement of Art. 19, paragraph 2, of Italian Competition law and the parties were imposed fines totalling 28 thousand euros. In December 2013 an investigation was underway in order to ascertain whether conditions previously imposed by the ICA to authorize a merger could be revised or removed in light of new competition conditions (C3932B - *Telecom Italia/Seat Pagine Gialle*).

45. In 2013 the Authority also concluded an investigation concerning the non-compliance to separation obligations and prior notification pursuant to art. 8, paragraph 2-*bis* and 2-*ter* of law no. 287/90. The Authority ascertained the violation and the parties were fined²⁵. In December 2013 two similar proceedings were pending²⁶.

3. The role of the competition authority in the formulation and implementation of other policies

46. In 2013, pursuant to articles 21 and 22 of law no. 287/90, the Authority issued 64 reports concerning competition restrictions deriving from laws in force or upcoming legislation. Besides, the Authority issued 8 opinions pursuant to art. 4, paragraph 3 of decree law no. 95/2012²⁷. As in previous years, a wide range of economic sectors was involved.

Table 5. Reporting and advisory activities, divided by economic sectors (number of interventions carried out)

Sector	2013
Catering	1
Cinema	1
Electricity and gas	6
Financial services	3
Food and drinks industry	5
Human health activities	4
Information technology	4
Insurance and retirement funds	1
Oil industry	2
Other manufacturing activities	1
Other services	11
Pharmaceutical industry	3
Real estate activities	1
Telecommunications	4
Television rights	1
Transport	1
Transportation and hiring of means of transport	7
Waste disposal	2
Water supply	1
Wholesale trade	5
Total	64

25 Energy provider Valtellina and Chiavenna.

26 Prontobus Consortium-ARPA; A.IR Autoservizi Irpini-Interregional transportations.

27 This provision was cancelled by art. 1, paragraph 563 of law 27 December 2013, no. 147.

47. The ICA has enhanced its new competence entrusted by Article 21*bis* of the Competition Act, which empowers the ICA to send opinions regarding public administrations' provisions that restrict competition and - should the public administration fail to amend the provision - eventually challenge it before an administrative Court. In 2013 the ICA questioned 23 provisions, particularly in the sectors of insurance, retail distribution, public transport. In 70% of the cases the ICA's intervention entailed a revision of the provision by the relevant administration.

Table 6. Opinions pursuant to art. 21-*bis*, divided by economic sectors (number of interventions carried out)

Sector	2013
Catering	1
Cultural, entertainment and sports activities	1
Financial services	2
Human health activities	1
Insurance and retirement funds	6
Other services	2
Telecommunications	1
Transportation and hiring of means of transport	3
Wholesale trade	5
Wood and paper	1
Total	23

48. In the period of reference, the Authority concluded several sector inquiries pursuant to article 12 of law no. 287/90²⁸. Furthermore, during 2013, two sector inquiries were initiated²⁹.

49. In particular, the ICA conducted a sector inquiry into Italian retail distribution, concluded in July 2013, which was aimed at understanding the functioning of the food retail industry in order to detect possible distortions of competition. The analysis focused on the competitive structure and the contractual practices at each level of the distribution food chain, in recent years. According to the inquiry, the food industry shows a relatively low degree of market concentration (the top four retailers have an aggregate national market share of around 42%; higher figures are recorded locally). Nonetheless, the industry is characterised to a large extent by non-structural aggregations. Retailers are mostly organised through co-operatives or voluntary associations, franchising or buying 'super-alliances'. This is likely to affect efficiency and competition conditions. In addition, a high rate of shifting in the composition of buying 'super-alliances' may result in increased information flows between competing market players and higher transparency of contractual conditions which may facilitate co-ordination. Finally, negotiations between buying 'super-alliances' and producers have proved to be complex, entailing several negotiation rounds.

50. In the same inquiry, an investigation into vertical relationships in the production-distribution chain was also carried out, to review possible unfair or anticompetitive conduct. According to the selected sample, contractual relations are unsatisfactory for the majority of suppliers, specifically those in which contractual terms and conditions are not defined before the supplies take place, initial conditions are unilaterally changed by large retailers, and the amendments are retroactive and binding on producers.

51. The inquiry in the banking sector analysed the costs of different banking services, such as bank current account and financial services (e.g., payment services, treasury services). The inquiry pointed out a

28 Local public transport; Direct compensation procedure and competition in the third-parties vehicle insurance; Sector inquiry on the organized mass distribution; Sector inquiry on the costs of bank services.

29 Competition in the public local transports; Access to market of broadband telecommunications.

large number of structural and behavioural factors that help to explain the feebleness of competition. The main factors are the limited quantity and poor quality of the information supplied and to the existence of switching costs due to the monetary and non-monetary costs of leaving a bank and the practice of tying the current account to other services.

52. In a similar way, the inquiry in the insurance sector analysed the evolution of different insurance premiums. The inquiry shows that the market for insurance services suffers from an information deficit for customers (difficulty for the consumer to compare premium among companies) and from obstacles to customer mobility, in particular, due to fidelity bonus. Consumers have limited incentive to change insurance company since they risk to lose bonus connected to a stable “relationship” with the same insurance company. Moreover, the inquiry pointed out the existence of obstacles to the evolution of multi firm agents.

53. Finally, according to a law enacted in 2009, every year the Government is asked to present to Parliament a liberalization bill (Annual Law for Competition), taking into account the opinions and the recommendations delivered by the Italian Competition Authority. To facilitate this task, in 2013 likewise on previous occasions, the Italian Competition Authority compiled a broad comprehensive report containing a menu of advocacy proposals covering different sectors, selected on the basis of their potential impact on competition and growth.

4. Resources of competition authorities

4.1 Resources

4.1.1 Annual budget

54. The Italian Competition Authority does not have a specific competition-related budget. The overall expenditure also includes costs for non-competition competences (concerning unfair commercial practices, misleading and comparative advertising, conflicts of interest, unfair contractual clauses, legality rating).

55. Law Decree n. 1/2012 introduced a new system of funding for the Italian Competition Authority (effective in 2013). The Decree introduced a mandatory contribution (.08 per thousand) for companies incorporated in Italy whose turnover exceeds a threshold of 50 million euros. The revenues from this contribution replace all previous forms of funding (merger fees and public budget).

56. Pursuant to the spending review provisions, the Italian Competition Authority in 2013 was not allowed to exceed the overall expenditure incurred in 2012, which amounted to 59.3 million euros (73.5 million USD).

4.1.2 Number of employees

57. The total staff of the ICA at the end of 2013 was 273. This includes all human resources working for the Authority, also in non-competition areas (concerning unfair commercial practices, misleading and comparative advertising, conflicts of interest, unfair contractual clauses, legality rating).