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Italy

1. Introduction

1. This submission provides an overview of the experience on the relationships between the Italian Competition Authority (the AGCM or the Authority) and the main sector-focused regulators (i.e., with the exclusion of “horizontal” regulators, such as data protection or securities authorities, as suggested by the OECD background note). In particular, the submission focuses on the issue of the independence of sector regulators and the mechanisms for achieving and encouraging consistency between sector regulator and competition authority objectives and actions.

2. When the Authority was established by Law n. 287 (the Competition Act) in 1990, economic regulation was mainly entrusted to government departments and agencies with the exception of the credit sector and the TV-radio and publishing sector, which were under the supervision of independent regulators. Indeed, the legislator had initially envisaged an exclusive competence for these regulators to apply the main provisions of the Competition Act with the requirement that they would seek an opinion of the Authority before issuing an antitrust enforcement decision. Over time, such institutional design has been modified and exclusive competence of the regulator was removed in 1997 for in the TV-radio and publishing sector and in 2006 for the credit sector when a major reform of the banking/financial regulatory framework attributed the exclusive competence to the AGCM¹: as a result, the Authority is now the sole responsible for the enforcement of the competition law across all sectors of the Italian economy.

3. The model of independent administrative authorities was developed in Italy in the 1990s under the impulse of the European legislation which launched a liberalization process in the public utilities sector. Despite the flourishing of the regulators, the Italian institutional architecture has not embraced the model of concurrent jurisdiction on competition matters.

4. This contribution is organised as follows. Section 2 provides an overview of the institutional framework of the main sectoral regulators in Italy. Section 3 focuses on the importance of the independence of regulators and other factors that influence the relationship with the Authority in light of the experience of the AGCM. Section 4 describes the cooperation instruments in place to ensure a consistent and coherent action of the different authorities. Section 5 concludes.

2. Sector Regulation in Italy

5. Independent administrative authorities in charge of regulating specific sectors were established following the processes of liberalization and privatization induced by the EU legislation. These processes, which begun in telecommunications, were later extended to most utility sectors, like electricity, gas, the postal service and railways transportation.

¹ See the AGCM submission to the 2017 OECD roundtable on Co-operation between Competition Agencies and Regulators in the Financial Sector: 10 years on from the Financial Crisis, available at: [https://one.oecd.org/document/DAF/COMP/WP2/WD\(2017\)9/en/pdf](https://one.oecd.org/document/DAF/COMP/WP2/WD(2017)9/en/pdf)

6. Law n. 481/1995 introduced general rules for competition and regulation in public utilities sector and envisaged regulators in the electricity and gas sector, telecommunications sector and water sector, establishing common rules concerning independence, governance and financing. As a result, an independent regulator was established in the several sectors since then as shown in the table below: electricity and gas (1995), fixed and mobile telecommunications (1997), water (2011), postal services (2012), transport (2013), and waste recycling (2017).

Table 1. Overview of the main sector regulators

Regulator Name	Establish. Year	Board Composition	Board appointment and mandate duration	Main Sectors under supervision (year)
Authority for Energy, Networks and Environment (ARERA)	1995	President and four board members	Appointed by Italian Presidential Decree, after approval by the Council of Ministers of a proposal from the Ministers responsible and with a favourable two-thirds majority of the members of the competent Parliamentary Committees. The President and the members remain in office for a non-renewable seven years term.	Electricity and gas (1995) water services (2011) district heating (2014) waste recycling (2017)
Communications Regulator (AGCOM)	1997	The Board is made up of President and the four board members. They are also grouped in two Commissions, one specialising in infrastructures and networks and one in products and services. Each Commission is made up of the President and two board members	President appointed by Italian Presidential Decree on a proposal of the President of the Council of Ministers with the agreement of the Communications Minister, after the opinions of the competent parliamentary committees. Board members are appointed by Italian Presidential Decree, two selected by the Senate and two by Chamber of Deputies. President and Members of the Board have a seven-year non-renewable mandate	Telecoms, audiovisual and publishing (1997) Copyrights protection (2000) Postal services (2012) Collective management of copyright and related rights (2017)
Transport Regulation Authority (ART)	2011 (but operational in Sept 2013)	The Board is composed of the President and two Members	They are designated by the Council of Ministers upon proposal of the competent Minister and appointed by the President of the Republic. President and Members of the Board have a seven-year non-renewable mandate.	transport and access to related infrastructures and services (2011).
Regulator of insurance and re-insurance sector (IVASS)	2012 (replacing by incorporation a former independent regulator)	The Board of Directors is a collegial body made up of the President and two Directors.	The Directors are appointed by decree of the President of the Republic upon a resolution adopted by the Council of Ministers at the	Insurance and re-insurance sector (1982)

	ISVAP, set up in 1982)	The President is the Senior Deputy Governor of the Bank of Italy.	initiative of the President of the Council of Ministers, acting on a proposal from the Governor of the Bank of Italy and in agreement with the Minister of Economic Development. Each of the two Directors is appointed for a term of office of six years, renewable once.	
Central Bank of Italy	1893 (Law 449 of 10 August 1893)	The Directorate is a collegial body, made up of the Governor, the Senior Deputy Governor and the three Deputy Governors.	Governor appointed by Italian Presidential Decree on a proposal of the President of the Council of Ministers with the agreement of the Board of Directors of the Central Bank. Acting on a proposal from the Governor, the Board of Directors appoints the other members of the Directorate. Governor's mandate is 6 year, renewable once	Banking and financial services, payment systems, management of intermediaries (among others)

Source: websites of the authorities

7. A 2012 parliamentary inquiry on Italy's independent administrative authorities² highlighted that the evolution of the regulatory framework has been not always based on a coherent design and in some cases there have been overlaps between the competences of the different regulators. Moreover, the inquiry outlined that the methods for appointing the members of the board of the authorities were heterogeneous and appeared unsatisfactory in terms of openness and transparency in the collection of candidatures; in addition, it was found that the financing of the regulators was mainly based on State funds, subject to yearly variations which fuelled uncertainty in the planning of activities and the management of resources for the regulators.

8. In this regard, since 2006, the Italian legislator has undertaken a process of reducing the burden on State budget while increasingly relying on contributions from the regulated undertakings to finance their respective regulators. This model³ was eventually applied also to the AGCM: in 2012 a stable financing mechanism was introduced, based on a levy on all undertakings with turnover of 50 €m or above: the levy, originally set at 0.08 per thousand euro of turnover, has been reduced by the Authority over time to the current level of 0.055 per thousand euro⁴. The new mechanism replaced all the previous funding sources, including merger notification fees. In the AGCM view, the financial independence is as important as the institutional and organizational one for the full exercise of its mission.

² See "Documento conclusivo dell'indagine conoscitiva sulle autorità amministrative indipendenti", available at: http://leg16.camera.it/_dati/leg16/lavori/documentiparlamentari/indiceetesti/017/017/INTERO.pdf

³ Adopted by all the sector regulators listed in Table 1.

⁴ The contribution due by an undertaking cannot be higher 100 times its minimum level of the contribution (i.e., the contribution at 50€m turnover) which represents a maximum cap.

9. Another important trend to highlight is the increase in the number of sectors under regulatory supervision. The Authority had advocated the need for a regulation that is stable and independent from the political influence in the sectors displaying the economic features of natural monopolies. The Authority has welcomed, in the last years, the attribution of regulatory function in the transport sector, the water and postal services, the recycling and waste sector. In particular, in the overall transport sector the Authority has successfully advocated the establishment of an independent regulator which occurred eventually in 2011 (operational in 2013).

10. In network industries, the Authority has suggested the attribution of competences to already existing independent authorities in order to exploit economies of scope (given the considerable experience accumulated in similar industries) and address the criticism of the growing number of regulators: for instance, the electricity and gas regulator has been attributed competences in the water and waste sectors, while the communications regulator has been given the supervision of the postal services and copyrights.

11. In sectors in which the regulatory functions are attributed to local government authorities, for example health care⁵ and ports⁶, the Authority advocated for a more transparent governance structure, by removing any conflicts of interest due to dual role of local government authorities as regulator and service provider at the same time.

3. The AGCM relationship with sector regulators: independence and other factors

12. Several institutional factors can affect the relationship with sector regulators, including the status of independence, the powers to enforce and monitor regulations, the different institutional missions and approaches between competition authorities and regulators.

13. In the AGCM experience, the independence of sector regulators from the political sphere and the regulated undertakings is a relevant aspect that helps to (i) ensure a consistent application of regulatory framework and therefore a level-playing field (especially in presence of state-owned enterprises); (ii) provide legal certainty to the regulated undertakings especially in terms of planning investments; and, from an AGCM's perspective, (iii) ensure a more effective antitrust enforcement. In addition, independence brings professionalism and expertise in the staff of regulators and a funding system ensuring a steady budget to regulators helps to retain qualified staff and plan activities.

14. The examples described in the sub-sections below are illustrative in this respect. The experience of the countries like Italy that have liberalized by imposing vertical separation in previous vertically-integrated monopolies shows the importance of an independent regulator for promoting profitable entry in the upstream and downstream segments open to competition.

⁵ See the AGCM contribution to the 2018 OECD Roundtable on Designing publicly funded healthcare markets, available at: [https://one.oecd.org/document/DAF/COMP/WP2/WD\(2018\)33/en/pdf](https://one.oecd.org/document/DAF/COMP/WP2/WD(2018)33/en/pdf)

⁶ For more information about the Authority's enforcement in ports sector, see Italy's contribution to the OECD Policy Roundtables, Competition in Ports and Port Services, 2011, available at: <http://www.oecd.org/daf/competition/sectors/48837794.pdf>

15. Entrusting economic regulation to an independent authority also helps to solve the time inconsistency problem related to investments⁷: for instance, since the transfer of the competences in the water sector in 2011 to the electricity and gas regulator, investment expenditure in water infrastructure has registered an average annual increase of 5.5% between 2013-2018, an increase of 24% in the last seven years⁸. The regulator's works have contributed to a rationalization of the sector, a development of a transparent stable and harmonised framework encouraging investments, reducing gaps in service quality standards and providing incentives to service efficiency.

16. The below examples also show that independence is important but might not be sufficient as there are situations in which independent regulators might have inadequate powers to enforce regulations or a narrow mandate. Furthermore, unlike the AGCM, sector regulators have different objectives to pursue at the same time (for example security of supply or financial stability) and this may lead to divergent views in some cases.

3.1. Electricity and gas sector

17. In this sector, the independence of the sector regulator was beneficial to the relationship between the AGCM and the regulator at the key moments of the liberalization process, ensuring cooperation even in presence of potential divergent approaches.

Box 1. Some examples from the electricity and gas sector

In Unapace/Enel case¹, the two agencies interacted at the very start of the liberalization process in 1998, which concerned only large industrial customers allowed to switch electricity providers: the AGCM opened a proceedings to ascertain the restrictive nature of two clauses² imposed by the incumbent player Enel to tie in such customers. The sector regulator intervened with the imposition of certain limitation to these clauses and therefore the antitrust proceedings were closed without a finding of the infringement³.

Another example shows cooperation between the two institutions even in presence of different views. In Tem/Stove⁴, the main energy producers submitted to the AGCM, for an exemption under antitrust law, their agreement to jointly plan the production of electricity for the reserved market (households and small businesses). The sector regulator shared the view of the AGCM that such agreement violated antitrust law and issued a regulation imposing a transitory system for selling electricity to the reserved market. The AGCM authorised the arrangement proposed by the regulator only for the period of transition to the launch of the electricity exchange: the regulator's solution, while solving the issue of exchange of information between competitors, was seen as anticompetitive by the AGCM. This example shows that the divergent views of the two authorities did not stem from a divergent assessment of the agreements in question (in terms of their anticompetitive effects) but rather from a difference in the missions of the two institutions with the sector regulator balancing competition with other objectives (security of supply for the reserved

⁷ This problem occurs when the government acting as a regulator may commit to one approach prior to investment by or entry of firms and change post-investment or post-entry (particularly after a change in political control).

⁸ Source: Utilitalia, Blue Book 2019 report.

market). In its decision to authorize the anticompetitive arrangement although for a limited period of time, the AGCM took into consideration this trade-off.

In 2003, the two authorities carried out a joint sector study on the status of liberalization process in the electricity and gas sector, which represented an opportunity to share their understanding and approaches which led to a phase of greater interaction and cooperation. For instance, the AGCM launched four investigations following a submission from the energy regulator ARERA⁵: in one of them, the AGCM could intervene against the incumbent gas operator Eni to impose investments in pipelines based on the outcome of the market study which forecast a shortage in supply as a result of bottlenecks in the import infrastructure⁶. More recently, the Authority launched other two investigations following a submission from the regulator, concerning the behaviour of two undertakings in the electricity exchange markets⁷.

Notes:

¹ See AGCM case no. A263 - UNAPACE/ENEL, in AGCM bulletin 13-14/1999.

² The first concerned the extension from one to three years of the sole electricity provider agreement; the second gave Enel pre-emptive rights in cases where its clients received more advantageous offers from competitors (the so-called “English clause”).

³ In Enel Trade – Clienti Idonei, a similar situation occurred at another key moment of the liberalization process, that is, the launch of the electricity exchange market: during the AGCM’s investigation, the sector authority issued a regulation which modified the fidelity clauses used by the incumbent Enel vis-à-vis large customers of the liberalised segment. See AGCM, case no. A333 - ENEL TRADE-CLIENTI IDONEI, in AGCM Bulletin n. 48/2003.

⁴ See AGCM, case no I530 - ENEL PRODUZIONE-ENDESA ITALIA, in AGCM Bulletin n. 24/2004.

⁵ See AGCM cases: A358 - ENI-TRANS TUNISIAN PIPELINE, in AGCM Bulletin n. 5/2006; A366 - COMPORTAMENTI RESTRITTIVI SULLA BORSA ELETTRICA, in AGCM Bulletin n.49/2006; A371 - GESTIONE ED UTILIZZO DELLA CAPACITÀ DI RIGASSIFICAZIONE, in AGCM Bulletin n. 8/2007; A423 - ENEL - DINAMICHE FORMAZIONI PREZZI MERCATO ENERGIA ELETTRICA IN SICILIA, in AGCM Bulletin n. 50/2010.

⁶ See AGCM case no. A358 - ENI-TRANS TUNISIAN PIPELINE, in AGCM Bulletin n. 5/2006.

⁷ See AGCM cases no. A498A - ENEL-PREZZI SERVIZI DI DISPACCIAMENTO AREA BRINDISI and A498B - SORGENIA-PREZZI SERVIZI DI DISPACCIAMENTO AREA BRINDISI 17/2017, in AGCM Bulletin n. 17/2017.

18. The effectiveness of the antitrust intervention was also ensured by the presence of a legislative framework explicitly contemplating the promotion of competition as a goal among the others. In the liberalization process of sectors like energy and telecoms, a specific mandate was given to regulatory authorities established at national level to direct their activity towards the development of competitive markets⁹.

19. The importance of their pro-competitive role has been even underlined by the provision, in the EU directives, that regulation authorities are autonomous entities, independent from government, so not to favour national or State controlled companies. When regulators adopt decisions in order to promote competition, they clearly pursue the same objective of competition authorities, although following a different approach: regulators’ decisions are in fact based on an ex-ante prescription of the undertakings’

⁹ To this end they have been given the task of taking a number of ex-ante decisions concerning the structure of the market and the conduct of firms with market power. These include defining markets relevant from a competition point of view; identifying the existence of situations of market power which may allow distortions of the competitive process; imposing conditions of access to infrastructure; dictating price and quality conditions, in order to allow entry and competition by firms with limited market power.

conducts, while competition authorities' decisions are the result of an ex-post evaluation of the same conducts.

3.2. Transport

20. Before the establishment of the independent authority ART in September 2013, the sector was characterised by the presence of several layers of regulatory oversight, at national, regional and local level, entrusted to government departments/agencies (e.g., airports and railways) and regional/local authorities (e.g., ports and local public transports). In its first six years, the ART has worked on access conditions to infrastructures and related services, in particular the motorway sector and in the rails, ports and airports infrastructure sector, providing regulatory clarity and stability to the economic structure of these sectors. This is certainly an area where the application of the regulator's technical expertise displays all its relevance.

21. The Authority's experience in the transport sector shows how the lack of an independent regulator, the uncertainty of the legal framework and the presence of the State both as regulator and service provider can make the enforcement of competition law less effective and more problematic.

Box 2. Examples from the transport sector

These issues have been considerably addressed in the railways sector in which the Authority dealt several practices aimed at foreclosing new competitors' entry into the liberalised markets of freight or passenger transport services, put in place by the state-owned group Ferrovie dello Stato ("FS") – through its subsidiaries Rete Ferroviaria Italiana and Trenitalia, respectively, the manager of the railway sector and the incumbent operator in the railway passenger transport market¹.

In 2008, the AGCM investigated an alleged abuse of dominance by RFI, concerning the economic conditions of access to the rail infrastructure applied to freight service operators². In particular, RFI was alleged to unduly deny the application of a discount on access charges which, under some circumstances, undertakings would have been entitled to³. The conduct was likely to put such operators at a competitive disadvantage in the freight market. To address such competition concerns, FS committed to pay a lump sum to every interested rail operator as a reimbursement of the intitled discounts.

In 2009, the AGCM carried out an investigation on an alleged abuse of dominance in the national market for access to maintenance facilities for high-speed railway passenger transport services. In particular, the facilities manager RFI was alleged to put in place a constructive refusal to grant access to maintenance areas and station facilities, in order to foreclose a newcomer, NTV, in the high-speed segment, and competitor of Trenitalia. During the proceeding, RFI committed to provide a timely and cost-effective access to the maintenance facility in use by Trenitalia to all interested rail operators. RFI further offered access on fair and non-discriminatory conditions to another appropriate area, where to construct a new maintenance centre.

In 2012, the AGCM found that the State-owned railway group FS through its subsidiaries RFI and Trenitalia had put in place a complex strategy aimed at keeping Arenaways, the first competitor of Trenitalia, out of the profitable route between Milan and Turin from 2008 to 2011. According to the AGCM, FS was liable for two anticompetitive conducts,

consisting in: (i) dilatory activities, as FS – before giving Arenaways access to the network - started a long (and unnecessary) consultation procedure with the concerned Regions (Lombardy and Piedmont) and the Ministry of Transport and Infrastructures, and then referred the matter to the Office for the regulation of railway services (URSF) on the ground that the request could have had a negative economic impact on the public service agreement signed by Trenitalia; (ii) provision of misleading information to the URSF, as Trenitalia had allegedly provided the latter with a description of the facts (and of its sustained costs) which had the effect of swaying the URSF's decision in its favour⁴.

In ports sector, in several cases the Authority has pointed out that the access to ports' essential facilities, subject to concession by Port Authorities, should be guaranteed in accordance with transparency and non-discrimination principles since access to port infrastructures is a precondition for providing port services, both cargo-handling and technical-nautical services. In some cases, the AGCM dealt with the hybrid role of Port Authorities as regulators and providers of services, taking advantage of their regulatory role to benefit their economic activities⁵.

In the airport services sector, the AGCM intervened in some occasions to tackle the issue of excessive prices charged by the airport infrastructure operators in: i) the market for access to centralized infrastructures and related services, and ii) various markets for the provision of goods for the common and exclusive use of special user categories (handler operators for refueling services, caterers, cargo handlers). The AGCM investigations showed that the charge fees were not cost-oriented and resulted in excessive gains in light of the actual costs associated with various activities⁶.

Notes:

¹ For more information, see the AGCM submission to the 2013 OECD Roundtable on Recent Developments in Rail Transportation Services, available at: <http://www.oecd.org/daf/competition/Rail-transportation-Services-2013.pdf>

² See AGCM case no. A389 - RAIL TRACTION COMPANY/RETE FERROVIARIA ITALIANA-FERROVIE DELLO STATO, in AGCM Bulletin n. 43/2008.

³ Ministry Decree n. 44/T/2000 had introduced such discount as a provisional measure to compensate rail operators for the supplementary costs they had to incur due to the obsolete technological conditions of the network. The discount had to be granted by RFI, through public funding and upon transparent and non-discriminatory terms.

⁴ AGCM, A436 – FS Group/Arenaways, 25 July 2012 n. 23770.

⁵ For more information about the Authority's enforcement in ports sector, see Italy's contribution to the OECD Policy Roundtables, Competition in Ports and Port Services, 2011, available at: <http://www.oecd.org/daf/competition/sectors/48837794.pdf>

⁶ Case A442 Assofort-Aeroporti di Roma-Airport services; AdR Tariffe aeroportuali e SEA/Tariffe aeroportuali.

22. The above-mentioned cases highlight the weaknesses of a regulation that is not independent from the political context, that cannot be enforced and monitored without adequate powers and may result in regulatory capture, exacerbated by the fact that in many cases regulated undertakings are state-owned or locally-owned enterprises. The establishment of the independent sector regulator ART in 2013 was considered by the AGCM an important step in the direction of a better regulated and pro-competitive landscape in this sector.

3.3. Self-regulated sectors: professional services

23. The AGCM considers that the establishment of an independent regulators is generally desirable when access to facilities or inputs is essential for providing goods or

services in the downstream markets, since only an independent regulator can ensure access on a fair and non-discriminatory basis.

24. In other cases where regulation is needed, options that are less costly and equally effective should be explored such as other forms of public oversight or self-regulations. For instance, in liberal professions, the Authority has always recognised the relevance of ethical codes, qualification and training rules implemented by professional boards or associations in order to reduce information asymmetries on the demand side; at the same time, the Authority has experienced the tendency of these self-regulated sectors to create and raise barriers to entry also from a geographical point of view, thereby increasing prices to users of their services: such tendency has triggered AGCM interventions in several cases involving, for instance, associations of notaries¹⁰, lawyers¹¹, physicians and dentists¹², architects¹³ and sport federations¹⁴.

25. The AGCM interventions were aimed at tackling measures adopted by associations under disciplinary powers or deontological rules in order to restrict use of competitive tools (lower prices, advertising) allowed by the liberalization at national level in 2006; a common characteristic of these enforcement cases is that professions tried to circumvent 2006 liberalization or to extend the implementation of professional rules beyond restrictions set by national regulation.

26. In a recent antitrust investigation closed with infringement of art. 2 of the national law on anti-competitive agreements (July 2019)¹⁵, the Authority contested the instrumental way by which the Notary Council of Milan had collected sensitive data on the activities and performances of Notaries in their area, in order to be able to send observations and comments on the tariff policies adopted by some professionals, in particular those with high performance. The Authority concluded that the surveillance activity of the Notary Council was not justified by any other public objectives (e.g., tax purposes) and that the surveillance powers of the Notary Council could be carried out in other manners less restrictive of competition.

27. This case is illustrative of the conflict of interests in the governance structure of liberal professions: the AGCM has called for a separation of surveillance function from the

¹⁰ See, for instance, AGCM case no. I797 - CONSIGLIO NOTARILE DI ROMA, VELLETRI E CIVITAVECCHIA/DELIBERA IN TEMA DI DISTRIBUZIONE DEL LAVORO NELLA DISMISSIONE PUBBLICA, in AGCM Bulletin n. 24/2017.

¹¹ See AGCM case no. I748 - CONDOTTE RESTRITTIVE DEL CNF, in AGCM Bulletin n. 44/2014.

¹² See AGCM case no. I738 - RESTRIZIONI DEONTOLOGICHE FEDERAZIONE NAZIONALE DEGLI ORDINI DEI MEDICI CHIRURGHI E DEGLI ODONTOIATRI, in AGCM Bulletin n. 37/2014.

¹³ See AGCM case no. I781 - CNAPPC-PUBBLICAZIONE DEI METODI E STRUMENTI DI CALCOLO DEI COMPENSI PROFESSIONALI DEGLI ARCHITETTI, in AGCM Bulletin n. 47/2014.

¹⁴ See for instance AGCM cases no. A378 - FEDERITALIA/FEDERAZIONE ITALIANA SPORT EQUESTRI (FISE), in AGCM Bulletin n. 19/2008 and A396 - GARGANO CORSE/ACI, in AGCM Bulletin n. 23/2009.

¹⁵ See AGCM case no. I803 - CONDOTTE RESTRITTIVE DEL CONSIGLIO NOTARILE DI MILANO, in AGCM Bulletin n. 32/2019.

administrative function of the professional boards/associations so that the surveillance is not carried by professionals offering the same service of those under monitoring.

3.4. Relationships with government agencies: the pharmaceutical sector example

28. The AGCM has intervened several times in this sector and has established a fruitful relationship with the government agency AIFA which is responsible, among other things, for the prices of drugs in circulation through a regulatory mechanism which requires pharma companies to enter in a negotiation with AIFA as a process for setting prices. However, such mechanism does not provide AIFA with the power to impose on the company a given price level.

29. The AGCM's Aspen case about the exploitative abuse based on excessive prices¹⁶ shows that the incomplete mandate of this government agency is reflected on its weak bargaining power towards pharmaceutical companies, especially when they have exclusive rights on life-saving drugs. In addition, AIFA negotiates prices for pharmaceuticals with a view to balancing several interests.

4. Cooperation with sector regulators

30. In the Italian regulatory framework there are in place formal and informal mechanisms to ensure consistency among the actions of the various sector regulators and the Authority.

31. In the Competition Act, there are express provisions to ensure coordination between the AGCM and regulators in the enforcement of competition in some regulated sectors:

- in case of AGCM's merger proceedings involving insurance companies, the Authority shall seek the non-binding opinion of Insurance Regulator (IVASS) within 30 days (Sec. 20 of the Competition Act);
- in case of AGCM's proceedings involving undertakings active in the communication markets, the Authority shall seek the opinion of the sector regulator (AGCom) within 30 days (Sec. 1, c. 6, lett. c), n. 11, law n. 249/1997).

32. In addition, the communications regulator AGCOM (pursuant to the legislative decree n. 259/2003) and other regulators are required to seek an opinion of the AGCM when they perform the ex-ante analysis for determining the relevant markets (and therefore the dominance position and the obligations of the regulated undertakings). In the banking and financial sector, the 2006 reform (law n. 262 of 2005) requires that mergers and acquisitions are separately assessed by the AGCM and the Central Bank of Italy, each for the matters falling within their scope. In case of trade-off between the two goals - competition and financial stability - the 2006 reform introduced a provision in the Competition Act (Sec. 20, 5, 5-bis and 5-ter) whereby the Central Bank of Italy may request the AGCM to authorize an otherwise anti-competitive agreement or transaction for the purposes of the financial stability of one or more of the parties involved, provided that the authorized agreement or transaction does not impose restrictions on competition which are not strictly necessary for the pursuit of the financial stability. Unlike the concentrations in

¹⁶ See AGCM submission to the 2018 OECD roundtable on Excessive Pricing in Pharmaceutical Markets, available at: [https://one.oecd.org/document/DAF/COMP/WD\(2018\)106/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2018)106/en/pdf)

the insurance sector, the 2006 reform did not envisage a cooperation mechanism in the banking sector whereby the AGCM is obliged to seek an opinion from the regulator on the envisaged decision. Law n. 262 of 2005 requires all the competent authorities (Bank of Italy, IVASS and the AGCM) to cooperate and coordinate with each other within the scope of their mandate, in particular on the consumer protection side¹⁷.

33. Therefore, over the past ten years Memoranda of Understanding have been signed and renewed between the AGCM and the sector regulators, in particular with Bank of Italy¹⁸ and insurance regulator IVASS, the pharma agency AIFA, the communications regulator AGCom, the energy-water-recycling regulator ARERA and the recent transport regulator ART (in 2017 and renewed in November 2019)¹⁹. The content of these MoUs includes informing each other of potentially infringing conducts arising from proceedings or pre-investigation phase; mutual exchange of views and advice on matters of common interest; mutual cooperation in advocacy initiatives towards the Parliament or the Government on matters of common interest; joint initiatives in the field of enforcement and market monitoring; and mutual cooperation in consumer protection initiatives and international initiatives.

34. Another important area of cooperation is in reaching a common understanding of the markets and their developments especially when technological progress or liberalization reform are likely to change the landscape. The AGCM carried out several joint market studies: on broadband networks (2014) and retail mobile calls (2006) with the communications regulator; on electricity and natural gas sector with the sector regulator (2003); on financial services with the Central Bank (1997). In 2018, it has launched a joint inquiry on big data with the privacy regulator and the communications authority (still ongoing).

35. These initiatives are important opportunities to strengthen the relationship between the authorities involved and may pave the way to more closed forms of cooperation. For instance, as a result of the joint initiative on big data, the three Authorities have committed to sign up Memorandum of Understanding in order to cooperate and work more closely and in a permanent manner in the area of big data, especially through advocacy initiatives, in order to exploit fully the synergies between the three agencies and their complementary competences.

36. Another example of cooperation is the issuing of joint opinions vis-à-vis the policymakers in critical moments when a legislative action is urgently needed to address long standing issues. For instance, in October 2017, the AGCM and the transport regulator ART, together with the public procurement authority, issued a joint opinion to the policymakers concerning the organization of regional rail transport services, addressed to

¹⁷ For more information, see AGCM submission to the 2017 OECD roundtable on Co-operation between Competition Agencies and Regulators in the Financial Sector, available at: [https://one.oecd.org/document/DAF/COMP/WP2/WD\(2017\)9/en/pdf](https://one.oecd.org/document/DAF/COMP/WP2/WD(2017)9/en/pdf)

¹⁸ In 2007, the AGCM has signed a cooperation agreement with the Central Bank of Italy with the objective of facilitating the exchange of confidential and non-confidential information in relation to the parallel assessment of mergers in the banking sector. Indeed, cooperation was important during the first wave of mergers in the sector (2006-2009).

¹⁹ The texts of MoUs are available at the AGCM website: <https://www.agcm.it/chi-siamo/normativa/protocolli-di-intesa?limit=0>

the central government and the Italian regional authorities, as they share responsibility in this area²⁰.

37. Finally, staff exchange with regulators – mainly in the form of secondment - is another way to gain or share expertise among the institutions, facilitated by the existence of common personnel rules within the public administration.

5. Concluding remarks

38. The Authority believes that the independence is a fundamental requisite for sector regulator while recognising the intrinsically different nature and role of regulators compared to competition authorities like the AGCM.

39. The recent trend highlights increased opportunities and demand for inter-agency coordination and cooperation with the aim of ensuring a consistent regulatory framework to the benefits of businesses and consumers, especially in areas of the economy under profound transformation brought by innovation and digitalization.

²⁰ See opinion n. AS1441, published in the AGCM Bulletin n. 42/2017. An English translation is available at: <https://www.autorita-trasporti.it/wpcontent/uploads/2017/10/Joint-position-Procedures-for-direct-award-of-regional-transport-services-by-rail-25-October-2017-1.pdf>